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No. _____

IN THE

Supreme Court of the United States

October Term, 1984

INTELICENSE CORPORATION, S.A.,
Petitioner,

vs.

UNITED STATES OLYMPIC COMMITTEE,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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Questions Presented for Review

1. May the Amateur Sports Act of 1978 (36 U.S.C. §§371 *et seq.*), constitutionally be construed to allow the taking of the property rights in the Official International Olympic Committee Pictograms from the undisputed owner and its exclusive world licensing agent, and the vesting of those rights in a new owner, without just compensation and due process of law?

2. May the Amateur Sports Act of 1978 (36 U.S.C. §§371 *et seq.*), constitutionally be construed to allow the unlimited delegation of legislative power to an interested, private entity, without guidelines for the exercise of that power and without provision for judicial review?

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Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioner prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered on June 18, 1984, in the cases of *United States Olympic Committee v. Intelicense Corporation, S.A., International Sports Marketing, Inc.*, Docket No. 83-9025, and *International Sports Marketing, Inc., Intelicense Corporation, S.A. v. United States Olympic Committee*, Docket No. 83-9063.

Parties

The parties are Intelicense Corporation, S.A. ("Intelicense") and International Sports Marketing, Inc. ("ISM")[1], Defendants-Appellants in Docket No. 83-9025 and Plaintiffs-Appellants in Docket No. 83-9063, and the United States Olympic Committee ("USOC"), Plaintiff-Appellee in Docket No. 83-9025 and Defendant-Appellee in Docket No. 83-9063.

Certification To The United States Attorney General

This action involves a proceeding in which the constitutionality of an Act of Congress has been drawn into question. However, neither the United States Court of Appeals for the Second Circuit nor the United States District Court for the District of Vermont certified to the United States Attorney General the fact that the constitutionality of 36 U.S.C. §§371 *et seq.* has been drawn into question. 28 U.S.C. §2403(a). Therefore, Intelicense herewith serves a copy of this Petition upon the United States Solicitor General, as required by 28 U.S.C. §2403(a) and U.S. Supreme Court Rule 28.4(b).

Reported Opinions

The District Court Order and Opinion was not officially reported. The Opinion of the Court of Appeals is officially reported at 737 F.2d 263 (2d Cir. 1984). Both opinions are fully set forth in the Appendix submitted with this Petition.

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[1] Intelicense Corporation, S.A. and International Sports Marketing, Inc., have no parent companies, no subsidiaries, and no affiliates.

Grounds For Jurisdiction

The Judgment sought to be reviewed was entered by the United States Court of Appeals for the Second Circuit on June 18, 1984, in an appeal from the United States District Court for the District of Vermont.

This Court has jurisdiction to review the judgment by a Writ of Certiorari under 28 U.S.C. §1254(1).

Constitutional Provisions, Statutes

Constitution of the United States of America, Amendment V

> No person shall be . . . deprived of . . . property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amateur Sports Act of 1978, §1(b) (36 U.S.C. §380)

> §380(a). Use of Olympic symbols, emblems, trademarks and names
>
> (a) Without the consent of the Corporation, any person who uses for the purpose of trade, to induce the sale of any goods or services, or to promote any theatrical exhibition, athletic performance, or competition—
>
> (1) the symbol of the International Olympic Committee, consisting of 5 interlocking rings;
>
> (2) the emblem of the Corporation, consisting of an escutcheon having a blue chief and vertically extending red and white bars on the base with 5 interlocking rings displayed on the chief;
>
> (3) any trademark, trade name, sign, symbol, or insignia falsely representing association with, or authorization by, the International Olympic Committee or the Corporation; or

(4) the words "Olympic", "Olympiad", "Citius Altius Fortius", or any combination or simulation thereof tending to cause confusion, to cause mistake, to deceive, or to falsely suggest a connection with the Corporation or any Olympic activity;

shall be subject to suit in a civil action by the Corporation for the remedies provided in the Act of July 5, 1946 (60 Stat. 427; popularly known as the Trademark Act of 1946). However, any person who actually used the emblem in subsection (a)(2) of this section, or the words, or any combination thereof, in subsection (a)(4) of this section for any lawful purpose prior to September 21, 1950, shall not be prohibited by this section from continuing such lawful use for the same goods or services. In addition, any person who actually used, or whose assignor actually used, any other trademark, trade name, sign, symbol, or insignia described in subsections (a)(3) and (4) of this section for any lawful purpose prior to enactment of this chapter shall not be prohibited by this section from continuing such lawful use for the same purpose and for the same goods or services.

Statement Of The Case

This Writ is sought to review the June 18, 1984, decision of the United States Court of Appeals for the Second Circuit, affirming the decision of the United States District Court for the District of Vermont. That decision resulted in Final Judgment[2] being entered against Intelicense in this matter on November 28, 1983.

Two cases were originally consolidated for trial and appeal, jurisdiction in federal court having been based on 28 U.S.C. §§1331(a)(1), 1337 and 1338, and 15 U.S.C. §1121. Both cases concerned the right of Intelicense to market within the United States the official Olympic emblems ("pictograms") of the International Olympic Committee ("IOC"), pursuant to contracts between Intelicense and the IOC. The pictograms are graphic designs of athletes participating in the various summer and winter Olympic sports, in combination with the five Olympic rings, and have been copyrighted by the IOC in the United States and elsewhere. An example of the winter pictograms is reprinted below:

[2] The Final Judgment of the District Court was entered as to fewer than all pending claims, pursuant to Fed. R. Civ. P. 54(b). The issue of damages has yet to be determined by the District Court. The District Court then modified the terms of its original injunction, in respects not relevant to this Petition, by Interlocutory Order dated June 27, 1984, claiming continued jurisdiction over the matter pursuant to Fed. R. Civ. P. 62(c). Final Judgment as to those remaining claims has not yet been entered.

BEST AVAILABLE COPY

After consolidation, partial settlements and dismissals as to some of the parties,[3] there remained essentially two claims. The USOC sought to enjoin Intelicense from marketing the IOC pictograms without USOC consent, and to recover its damages, based upon its interpretation of the Amateur Sports Act of 1978 ("Act"). Intelicense and its sublicensee, ISM, sought to enjoin the USOC from interfering with their property rights, reasoning that since Intelicense was authorized by the IOC to market the pictograms, the USOC had no power to bar such marketing. Intelicense further sought its damages resulting from the USOC's wrongful interference.

Motions for summary judgment were filed by all remaining parties, and on October 6 and 7, 1983, a consolidated hearing on motions and on the merits was held before the Honorable James L. Oakes, U.S. Circuit Judge for the Second Circuit, sitting by designation as the U.S. District Court Judge for the District of Vermont. By Final Judgment dated November 28, 1983, the District Court permanently enjoined Intelicense and ISM from marketing the IOC pictograms or any emblem containing the five Olympic rings in the United States, based on its interpretation of 36 U.S.C. §380. The Court of Appeals affirmed that judgment and held that the Amateur Sports Act of 1978 requires USOC approval as a prerequisite to the marketing or licensing of any Olympic emblems, symbols or pictograms in this country.

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[3] Two sublicensees of Intelicense, Millsport, Inc., and Sports Graphics, Inc., were originally sued by the USOC as well, but claims against them were settled and they were dismissed. The IOC was originally a party defendant in the suit against the USOC, but it, too, was dismissed pursuant to a stipulation of the parties.

Statement Of Facts

Intelicense is a Swiss Corporation whose primary business is the worldwide marketing of the official IOC Olympic pictograms. The IOC is also a Swiss corporation, founded in 1894 by Baron Pierre de Coubertin of France as the governing body of the modern Olympic movement. ISM is a Vermont Corporation and a sublicensee of Intelicense. The USOC is a private United States corporation responsible for the participation of the United States in the Olympic games, and recognized within the international Olympic structure as the National Olympic Committee ("NOC") for the United States.

In 1914, Pierre de Coubertin first published the five-ring symbol of the IOC on the official IOC flag at the Congress of Paris, France, giving rise to a copyright under French and Swiss law. Since that time, the IOC has held the copyright to the Olympic symbol. The IOC also owns United States copyrights for the official Olympic summer and winter pictograms. Intelicense, in turn, obtained its exclusive rights to market the IOC pictograms directly from the IOC, under two contracts dated October 1, 1979, and October 23, 1979. One contract granted Intelicense worldwide licensing rights to the winter sport pictograms for a period of seventy years, and the other granted identical rights to the summer sport pictograms. The agreements designated Intelicense as the "exclusive world licensing agent for the use of the pictograms," and granted Intelicense the "world exclusive right to license or sublicense" the use of the pictograms for the seventy year period. Based upon these agreements, the District Court found that the IOC had granted a valid, long-term license to Intelicense.

The IOC's purpose in seeking to commercialize its emblems was to obtain a source of funding for the NOCs

of developing countries as well as those of the more prosperous nations which provide the largest market for Olympic-related merchandise. Toward that end, the agreements between Intelicense and the IOC called for the IOC to receive 40% of all revenue generated by the marketing program. The IOC distributes 33⅓ percent of its shares of the revenue from a particular country to that country's NOC; 33⅓ percent to Third-World nations; and 33⅓ percent to the Olympic Solidarity Fund for hardship cases. The remaining revenues are distributed as follows: an additional ten percent to the NOC of the country in which the revenue was generated; five percent to the International Sports Federation recognized by the IOC; and forty-five percent to Intelicense. All expenses are absorbed by Intelicense from its share. The District Court found that the marketing of the IOC's pictograms by Intelicense would be beneficial to the under-developed countries and would also provide revenue for the USOC.

In 1980, Intelicense commenced to exercise its contractual right to license and market the IOC pictograms in the United States. The USOC sought to prohibit such activity, claiming it would adversely affect the USOC's fundraising efforts. Subsequently, the USOC filed suit to prevent Intelicense from exercising its license rights in the United States, basing its action on 36 U.S.C. §380. At trial, the executive Director of the USOC testified that he decided in his "sole judgment" that Intelicense be prohibited from marketing Olympic pictograms in the United States, and admitted that the USOC has no written standards regarding its so-called veto power. As he acknowledge, the USOC is only interested in its own profits and its own athletes. Thus, the director withheld consent to the IOC's program because he wanted a "financially more rewarding arrangement" for the USOC.

Prior Proceedings

In its answer and counterclaim, filed on April 15, 1983, Intelicense denied the applicability of the Amateur Sports Act as a bar to Intelicense's use of the pictograms, given its status as the exclusive worldwide licensing agent of the IOC, the governing body of the international Olympic movement. Such agency relationship arose from licensing agreements with the IOC, the validity of which have recently been affirmed in Swiss court judgments. At the District Court hearing on the merits, the USOC nevertheless maintained that its consent was required before Intelicense could market or license the IOC pictograms in the United States. Intelicense argued, *inter alia*, that if the court adopted the statutory interpretation suggested by the USOC, §380(a)(1) and (c) of the Act would work an unconstitutional taking of the undisputed property rights of the IOC and Intelicense in the official pictograms.

The District Court adopted the USOC's statutory interpretation, granted its summary judgment motion and permanently enjoined Intelicense from exercising its licensing rights absent USOC consent. Although the court recognized the official IOC pictograms to be the exclusive property of the IOC and its agent, Intelicense, and empowered the USOC to prohibit the property owners from enjoying such rights, it nevertheless found no taking to have occurred. Rather than looking to the undisputed effect of its interpretation on the owners' property rights, the court justified this holding by citing what it believed the purpose of the Amateur Sports Act to be:

> [R]ather than transfer the property of the IOC to the USOC what the Act does, inter alia, is to give the USOC the power and duty to protect the IOC

> symbol in the United States in accordance with the IOC charter and bylaws and in light of the relationship between the USOC and the IOC. The statute is entirely proper and is protective of the IOC, not harmful to it.

The District Court certified its Judgment Order pursuant to Fed. R. Civ. P. 54(b), and Intelicense timely appealed the ruling to the Court of Appeals for the Second Circuit. There, Intelicense argued that the Act, so interpreted, constituted a clear taking of its existing property rights. Indeed, the lower court's holding sanctioned a legislative taking of the property of "A" and its transfer to "B", without any provisions for determining necessity or just compensation. Intelicense further argued that such an interpretation violated due process, for it permitted the delegation to a private entity of a right of absolute discretion to confer or withhold an important commercial privilege, with no provisions for judicial review.

The Second Circuit of Appeals affirmed the order of the District Court, without reaching the constitutional issues. The Court declined to rule on the "taking" question, finding that Intelicense lacked standing to raise the claim. The Court failed entirely to address the issue of unconstitutional delegation of governmental power.

ARGUMENT

These Questions Are Important Issues Of Federal Law Which Have Not Been, But Should Be, Decided By This Court.

Intelicense respectfully submits that this Court should grant a Writ of Certiorari to determine whether the Amateur Sports Act of 1978 authorizes the USOC to prohibit the IOC and Intelicense, its exclusive licensing agent, from exercising in this country their undisputed property rights in the official IOC pictograms, and therefore violates the Due Process and Just Compensation Clauses of the Fifth Amendment. These are important federal constitutional questions which should be addressed by this Court, because those decisions have far-reaching precedential value affecting the rights of many persons beyond the actual litigants, and because such questions were incorrectly resolved below.

The Act, as construed below, purports to take away vested property rights in the word "Olympic", as used in tradenames and other promotional contexts, and effectively wipes out all such rights acquired between 1950 and 1978. Predictably, the USOC has selectively enjoined uses of the Olympic name or symbols which it considers to be unauthorized, and those cases which have been brought by the USOC are as telling as those which have not.[4] The USOC has most frequently waged its

[4] *See e.g. United States Olympic Committee v. Union Sport Apparel*, 220 U.S.P.Q. 526 (E.D. Va. 1983); *International Olympic Committee v. San Francisco Arts and Athletics*, 219 U.S.P.Q. 982 (N.D. Cal. 1982), aff'd, No. 82-4467 (9th Cir. 1983); *United States Olympic Committee v. International Federation of Body Builders*, 219 U.S.P.Q. 353 (D.D.C. 1982); *United States Olympic Committee v. David Shoe Co., Inc.*, No. C-1-82-596 (S.D. Ohio 1982); *Stop the Olympic Prison v. United States Olympic Committee*, 489 F. Supp. 1112, 1120 (S.D.N.Y. 1980).

battles against smaller targets arguably falling within the ambit of the Act, while many larger and better financed entities have escaped pursuit altogether. It is only because Intelicense has such important commercial interests at stake, as well as because its authority to market the pictograms is directly derived from the IOC, that it has pursued the matter to this Court. This case therefore provides this Court with the important opportunity to engage in a full review of the Act and the questionable manner of its administration by the USOC.

This Court has set out specific standards to guide the inquiry as to whether a government restriction of private property is constitutionally valid and, if so, whether the restriction is such as to require compensation. *See* Section A, *infra* at 14-17. This Court has reiterated that each such case must be closely examined on its own facts. In the instant action, the courts below failed adequately to analyze the constitutional infirmities inherent in the Act. If this Petition is denied, those infirmities will remain unaddressed, and the constitutional proscription against invalid and uncompensated takings will be violated.

In essence, the USOC has been empowered by the courts below to exercise unlimited discretion in granting and withholding permission to use the Olympic name and symbols in the United States, a power which the USOC has proceeded to exercise in a wholly arbitrary fashion. In the name of "amateur athletics," the USOC has increased its budget from $13 million in 1976 to $80 million in 1984, while creating the most commercial Olympics in the history of the games. In pursuit of such profit, it has used its veto power under the Act to significantly affect Olympic organizations throughout the world, and in this case has deprived Intelicense of its

right to use the IOC's own marks. Such a wholesale taking is the result of an unreviewable assessment by the USOC of its own economic interests. As the USOC operates without legislative standards, guidelines or limitations, the statutory construction permitting absolute veto power is constitutionally impermissible.

Whether the constitutionality of the Act as interpreted and applied to Intelicense can be sustained depends upon the resolution of two questions. The first is whether the Act contravenes the affirmative limitations on the exercise of governmental power contained in the Just Compensation Clause of the Fifth Amendment. That is, does the Act restrict the property rights of Intelicense to such a degree that the Just Compensation Clause requires there to be an exercise of eminent domain and just compensation to sustain it. This involves a factual inquiry into the severity of the law's impact on Intelicense's property rights, according to the standards propounded by this Court most recently in *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 426, 73 L.Ed. 2d 868, 102 S. Ct. 3164 (1982).

The second question to be resolved is whether the Act works to deprive Intelicense of its property in violation of the Due Process Clause of the Fifth Amendment. Intelicense maintains that this Act runs afoul of the Due Process Clause in part because it deprives Intelicense of its significant property interests without providing any objective, reviewable procedure for determining the necessity of the taking or the amount of compensation reasonably due. At a minimum, due process requires notice and an opportunity for some kind of hearing prior to deprivation of a property right. *Parratt v. Taylor*, 451 U.S. 527, 540, 686 L.Ed. 2d 420, 101 S. Ct. 1908 (1981).

Clearly, however, the Act makes no provision for any such procedure. Rather, it delegates to the USOC, a private entity in competition with Intelicense, the absolute power to confer or withhold the commercial privilege of marketing the official IOC pictograms in this country. It does not provide standards for the exercise of this power nor does it make any provision for judicial review of USOC decision-making. For each of these reasons, the Act fails to meet the requisites of the Due Process Clause and cannot constitutionally bar Intelicense's actions.

A. Just Compensation Clause

The Amateur Sports Act of 1978, as interpreted by the courts below, so frustrates the property rights of Intelicense that there must be an exercise of eminent domain and compensation to sustain it under the Just Compensation Clause of the Fifth Amendment.[5]

[5] The Second Circuit Court of Appeals failed to address the underlying issue of whether a taking occurred here, for the court found that Intelicence was without standing to raise the issue, based on its summary determination that Intelicense had no property interests at the time of the "taking". Appendix at 21a. Intelicense respectfully submits that the court's ruling in this regard is wholly without merit. Under contracts entered in 1979, Intelicense was the undisputed owner of the exclusive right to market the IOC pictograms worldwide at the time its rights were interfered with in 1980. As this court has made clear, "mere enactment" of a law which, on its face, does not restrict the beneficial use of an owner's property does not effect a taking. *Hodel v. Va. Surface Min. & Recl. Ass'n.*, 452 U.S. 264, 296-97, 69 L.Ed. 2d 1, 101 S. Ct. 2352 (1981). Only when the law is applied so as to cause actual interference with those rights can a taking be shown. *Id.* at n. 40. *See, e.g., Kaiser Aetna v. United States*, 444 U.S. 164, 178, 62 L.Ed. 332, 100 S. Ct. 383 (1979) (taking occurred when Government attempted to exert its rights under the Rivers and Harbors Appropriation Act of 1899, not on the date the statute was enacted) (dictum). *See also United States v. Dow*, 357 U.S. 17, 21, 2 L.Ed. 2d 1109, 78 S. Ct. 1039 (1958).

(Footnote continued on following page.)

This Court has recently sanctioned the use of the condemnation power to seize private property and transfer it to other, private individuals, so long as the taking is done for a legitimate public purpose, and assuming "that the weighty demand of compensation has been met." *Hawaii Housing Authority v. Midkiff*, _____ U.S. _____, _____, 81 L.Ed.2d 186, 220, 104 S.Ct. 2321, 2332 (1984). In the instant case, the courts below have done far more than this. They have sanctioned the taking of private property and its transfer to a wholly private entity under a scheme in which no provisions whatsoever for just compensation exist. Such a scheme has long since been held impermissible, *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 67 L.Ed. 322, 43 S.Ct. 158 (1922), and so far extends the well-established doctrines of this Court as to warrant review by way of Certiorari.

As this Court has stated, the question of what constitutes a "taking" for the purpose of the Fifth Amendment has "proved to be a problem of considerable difficulty." *Penn Central Transportation Co. v. New York City*, 438 U.S. 104, 124, 57 L.Ed. 2d 631, 98 S. Ct. 2646 (1978). This Court went on to state:

> While this Court has recognized that the "Fifth Amendment's guarantee ... [is] designed to bar Government from forcing some people alone to bear

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(Footnote continued from preceding page.)

Moreover, even if the taking were determined to have occurred in 1978, upon passage of the Act, Intelicense may nevertheless assert the rights of the IOC to its marks. Intelicense is the exclusive, authorized agent of the IOC, with express authority to conduct litigation on behalf of its principal under the pictogram agreements. These contractual rights were fully vested and found to be valid and binding in Swiss court judgments. As the IOC unquestionably has standing to raise the "taking" claim, "whatever any person is legally capable of doing himself, he can do through another as his agent." *United States v. Forbes*, 515 F. 2d 676, 680 (D.C. Cir. 1975).

> public burdens which, in all fairness and justice, should be borne by the public as a whole," *Armstrong v. United States*, 364 U.S. 40, 49, 4 L.Ed. 2d 1554, 80 S. Ct. 1563 (1960), this Court, quite simply, has been unable to develop any "set formula" for determining when "justice and fairness" require that economic injuries caused by public action be compensated by the government, rather than remain disproportionately concentrated on a few persons. See *Goldblatt v. Hempstead*, 369 U.S. 590, 594, 8 L.Ed. 2d 130, 82 S. Ct. 987 (1962). Indeed, we have frequently observed that whether a particular restriction will be rendered invalid by the government's failure to pay for any losses proximately caused by it depends largely "upon the particular circumstances [in that] case." *United States v. Central Eureka Mining Co.*, 357 U.S. 155, 168, 2 L.Ed. 2d 1228, 78 S. Ct. 1097 (1958), see *United States v. Caltex, Inc.*, 344 U.S. 149, 156, 97 L.Ed. 157, 73 S. Ct. 200 (1952).

Id. at 123-24, 57 L.Ed. 2d 631, 98 S.Ct. 2646.

While the Court must engage in "essentially ad hoc, factual inquiries," *id.* at 124, 57 L.Ed. 2d 631, 98 S.Ct. 2646, the "taking" analysis is not without standards. Among these, "[t]he economic impact of the regulation, especially the degree of interference with investment-backed expectations, is of particular significance." *Loretto v. Teleprompter Manhattan CATV Corp., supra*, 458 U.S. at 426, 73 L.Ed. 2d 868, 102 S. Ct. 3164 (quoting *Penn Cent. Transp. Co. v. New York City, supra*).

Under such a standard, the application of the Amateur Sports Act to bar all marketing of the official pictograms by Intelicense in this country amounts to no less than a

wholesale appropriation of Intelicense's property rights.[6] Indeed, Intelicense has been deprived of not some but all of the "essential sticks in the bundle of rights that are commonly characterized as property." *Kaiser Aetna v. United States, supra,* 444 U.S. at 176, 62 L.Ed. 2d 332, 100 S. Ct. 383. Not only has Intelicense been deprived the right to use and obtain a profit from its property in this country, but it has also been denied "the bare legal right to dispose of the [property] by transfer or sale." *Loretto v. Teleprompter Manhattan CATV Corp., supra,* 458 U.S. at 436, 73 L.Ed. 2d 868, 102 S. Ct. 3164. Thus, this case stands in sharp contrast to those in which a regulation merely delimits the conditions under which property owners may make use of their property, while allowing them to retain the essential attributes of ownership. *See, e.g., Hodel v. Va. Surface Min. & Recl. Ass'n., supra; Pruneyard Shopping Center v. Robins,* 447 U.S. 74, 64 L.Ed. 2d 741, 100 S. Ct. 2035 (1980); *Penn Cent. Transp. Co. v. New York City, supra.* Such interference with property rights is unconstitutional absent the exercise of eminent domain and the granting of just compensation.

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[6] " 'Property' denotes a broad range of interests that are secured by 'existing rules or understandings.' " *Perry v. Sindermann,* 408 U.S. 593, 601, 33 L.Ed.2d 570, 92 S.Ct. 2694 (1972). Here, in the evidence adduced below, the USOC expressly admitted its understanding that the five-ring symbol and the pictograms are the exclusive property of the IOC. Moreover, the District Court acknowledged Intelicense's property rights by finding that Intelicense had a "valid license from the IOC to use the Olympic symbol in connection with its pictograms."

B. Due Process Clause

Intelicense further argues that, as interpreted and applied, the Amateur Sports Act runs afoul of the Due Process Clause, for it deprives Intelicense of its significant property interests without providing any objective, reviewable procedure for determining the necessity for the taking or the amount of compensation reasonably due.[7] Rather, it delegates the sole decision-making authority empowered to deprive Intelicense of every attribute of ownership to the unguided discretion of an interested, private entity, a competitor for whom Intelicense's loss is its own financial gain. Such delegation denies Intelicense the due process guarantee "that the law shall not be unreasonable, arbitrary or capricious, and that the means selected shall have a real and substantial relation to the objective sought to be obtained." *Nebbia v. New York*, 291 U.S. 502, 525, 78 L.Ed. 940, 54 S.Ct. 505 (1934).

Such statutory grants of power to private citizens or entities are clearly limited by due process, *State v. Roberge*, 278 U.S. 116, 122, 73 L.Ed. 210, 49 S.Ct. 50 (1928), which requires not only that the legislature prescribe standards and rules for the exercise of such power, but that the exercise be subject to review by an appropriate public body in order to insure against

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[7] In the context of the "taking" of property due process requires, at a minimum, notice and the opportunity for "some kind of hearing," *Parratt v. Taylor, supra*, 451 U.S. at 540, 68 L.Ed. 2d 420, 101 S.Ct. 1908, as well as reviewable proceedings for the determination of just compensation. *Penn. Coal Co. v. Mahon, supra*, 260 U.S. at 415, 67 L.Ed. 322, 43 S.Ct. 158. The Act, as interpreted to bar Intelicense from using, marketing or licensing others to use the official IOC pictogram in this country, contains provisions neither for a hearing on the necessity or degree of the "taking," nor for the setting of just compensation. Thus, it fails to meet even the barest requisites of constitutionality.

arbitrary, capricious or otherwise unreasonable decision-making. *Id.* at 122, 73 L.Ed. 210, 49 S.Ct. 50 (citing *Yick Wo v. Hopkins,* 118 U.S. 356, 366, 368, 30 L.Ed. 220, 6 S.Ct. 1064 (1886)); *see also Larkin v. Grendel's Den, Inc.,* 459 U.S. _____, 74 L.Ed. 2d 297, 103 S.Ct. 505 (1982); *Eubank v. City of Richmond,* 226 U.S. 137, 57 L.Ed. 156, 33 S.Ct. 76 (1912); *Todd & Co., Inc. v. Sec. & Exch. Comm'n.,* 557 F.2d 1008 (3d Cir. 1977); *Nat'l. Ass'n. of Indep. Television Producers & Distributers,* 516 F.2d 526 (2d Cir. 1975).

In this case, the courts' interpretations of the Act violate these basic principles of due process. The statute delegates to the USOC—a private corporation with a single-minded mission—the absolute power to confer or withhold the commercial privilege of marketing Olympic-related emblems. The statute provides no guidelines or standards for the exercise of this power, nor does it provide for review of the USOC's decision to grant or deny its consent.

Conclusion

In sum, as interpreted and applied by the courts below, the Amateur Sports Act of 1978 results in a wholesale taking of the property rights of Intelicense, the duly authorized agent of the IOC with authority to market the pictograms worldwide. Since the extent of the taking is unlimited, the deprivation is absolute and cannot be accomplished absent the exercise of eminent domain and just compensation. Moreover, under the present interpretation the Act deprives Intelicense of all such rights in a fashion wholly devoid of due process protections. Indeed, the courts' decisions below authorize the USOC to exercise arbitrary and unlimited power to grant or deny significant commercial privileges. In the absence of any legislative standards or guidelines, such authorization results in an impermissible delegation of power to a private entity.

As a result of these constitutional failures, the evils designed to be prevented by such constitutional limitations have indeed come to pass: the USOC has exercised its power in an arbitrary fashion, to the benefit of itself and to the detriment of Intelicense, the IOC, the International Olympic movement and amateur athletes worldwide. As such, the statute must either be held unconstitutional, or it must be reinterpreted to avoid a construction leading to unconstitutionality.

For the foregoing reasons, Intelicense respectfully requests that its Petition for a Writ of Certiorari be granted.

Respectfully submitted,

INTELICENSE CORPORATION, S.A.

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1984

No._____

INTELICENSE CORPORATION, S.A.,

Petitioner,

vs.

UNITED STATES OLYMPIC COMMITTEE,

Respondent.

Notice of Appearance

NOW COMES, PETER F. LANGROCK, ESQ. of the law firm of Langrock Sperry Parker and Wool, and appears for the Petitioner, Intelicense Corporation, S.A., in the above captioned matter.

DATED this 13th day of September, 1984.

LANGROCK SPERRY PARKER AND WOOL
By: PETER F. LANGROCK, ESQ.
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Certificate of Service

I, Peter F. Langrock, Esq. member of the firm of Langrock Sperry Parker and Wool, P.O. Drawer 351, Middlebury, Vermont 05753, attorney for the Petitioner in the above entitled cause, and member of the Bar of the Supreme Court of the United States, hereby certify that on the 13th day of September, 1984, I served copies of the foregoing Petition for a Writ of Certiorari and all appendices attached thereto and our Notice of Appearance on the United States Olympic Committee, by mailing three copies thereof, in duly addressed envelopes with first class postage pre-paid, to the attorneys of record for said Respondent, Richard G. Kline, Esq., Beveridge, DeGrandi & Kline, 1819 H Street, N.W., Suite 1100, Washington, D.C. 20006, and Robert D. Rachlin, Esq., Downs Rachlin & Martin, 100 Dorset Street, Burlington, Vermont 05401, and to the attorneys of record for International Sports Marketing, Inc., E. Bruce Weber, Esq., Weber, Perra & Gibson, 139 Main Street, P.O. Box 558, Brattleboro, Vermont 05301.

I further certify that on the 13th day of September, 1984, such service was also made in the above described manner upon the Solicitor General, Department of Justice, Washington, D.C. 20530.

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APPENDIX

First Opinion and Order of the United States District Court for the District of Vermont

UNITED STATES DISTRICT COURT

For the District of Vermont

Civil Action
No. 83-278

United States Olympic Committee,

Plaintiff,

v.

Millsport, Inc., *et al.*,

Defendants.

Civil Action
No. 83-44

International Sports Marketing, Inc.,

v.

International Olympic Committee, and
United States Olympic Committee.

Appendix—First Opinion and Order of the United States District Court for the District of Vermont.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Background and Procedural Status.

This case concerns the right of Intelicense, S.A., a Swiss corporation, and its sublicensee, International Sports Marketing, Inc. (ISM), a Vermont corporation, to use, market and sublicense within the United States the official pictograms of the International Olympic Committee (IOC). The pictograms are graphic designs of athletes participating in various summer and winter olympic sports. The pictograms have been copyrighted by the IOC in the United States and elsewhere. See Intelicense Exhibits F and G. They incorporate the Olympic symbol consisting of five interlocking rings.

Intelicense obtained its licensing rights from the IOC by virtue of two agreements with that entity respectively dated October 1, 1979 and October 23, 1979. See Intelicense Exhibits D (summer) and E (winter). The United States Olympic Committee (USOC), claiming rights under the Amateur Sports Act of 1978, Pub. L. No. 95-606, 36 U.S.C. §§371-396, particularly to controlling the manner in which the Olympic symbol is used commercially in the United States, brought suit against Intelicense and two of its sublicensees in the United States District Court for the District of Columbia (CA 82-3239), seeking to prevent Intelicense and its licensees, Millsport, Inc., and Sport Graphics, Inc., from exercising their license rights in the United States. *USOC v. Millsport, Inc.* Those two sublicensees, Millsport, Inc., and Sports Graphics, Inc., are no longer in the case, final judgments permanently enjoining them

under 36 U.S.C. §380 having been entered; the sublicensee ISM was, however, added as and remains a party. Intelicense filed a counterclaim against the USOC.

In a separate action, International Sports Marketing, Inc. (ISM), filed suit in the United States District Court for the District of Vermont against the IOC and the USOC (CA 83-44) alleging interference with its contractual rights pursuant to its sublicensing agreement with Intelicense. ISM also alleged several other causes of action arising from IOC's alleged breach of its agreements with Intelicense.

On May 31, 1983, the United States District Court for the District of Columbia ordered the transfer of *USOC v. Millsport, Inc., et al.* to the District of Vermont where the case was assigned Civil Action No. 83-278. On September 9, 1983, *USOC v. Millsport* was consolidated with *ISM v. IOC and USOC* for purposes of hearing and thereafter by stipulation of the parties IOC was dismissed from the case. Jurisdiction of the court over all other parties and over the subject matter of the actions and counterclaims is not disputed.

Cross motions for summary judgment were filed by the parties and hearing was had on an application by USOC for a preliminary injunction on October 6, 1983. At the conclusion of the hearing the court indicated that under Fed. R. Civ. P. 65 it would order the trial of the action on the merits to be advanced and consolidated with the hearing of the application for a preliminary injunction and that the parties would have the opportunity on or about November 3, 1983, to present any additional evidence that they might see fit on the

issues pertaining to liability, hearing on any question as to damages to be had separately, after determination of liability. The parties have indicated to the court in writing that they waive any additional hearing on the merits and have stipulated pertaining to certain evidence that would have been presented had such a hearing been held. They have also waived any rights to jury trial. The case is thus ripe for decision on the merits and the following Findings of Fact and Conclusions of Law are adopted.

II. Findings of Fact.

1. The agreements by which Intelicense obtained its rights from the IOC to market the IOC pictograms are set forth in Intelicense Exhibits D and E.

2. On November 2, 1979, the IOC acting through its Director wrote a letter to the National Olympic Committees, including the USOC, pertaining to its grant to Intelicense of the right to market the winter pictograms. The letter is included in Exhibit E. A similar letter as to summer pictograms was written on January 21, 1980, and is in Intelicense Exhibit D.

3. The pictograms are depicted in Intelicense Exhibits F and G.

4. The official International Olympic Committee summer and winter Olympic pictograms were registered in the Copyright Office by Intelicense as set forth in Intelicense Exhibits H and I.

5. While the U.S. Olympic Committee acting through Colonel F. Don Miller, its Chief Executive Officer, entertained various proposals made by Intelicense acting

through its director, Stanley R. Shefler, at no time was agreement reached relative to the marketing of the IOC pictograms in the United States. The position of the USOC is set forth in a letter from Mr. Miller to Mr. Shefler dated September 23, 1980, USOC Exhibit 3. In that letter the USOC makes it very clear that it cannot consider Mr. Shefler's most recent proposal dated September 9, 1980, and contained in USOC Exhibit 2. The USOC letter of September 23, 1980, also makes it very clear that the USOC requests Intelicense to "immediately cease and desist" from "contacting U.S. corporations in connection with the sale of the pictograms . . . ."

6. Mr. Shefler's reply to Colonel Miller dated September 29, 1980, and contained in USOC Exhibit 5 seeks to imply that an agreement had been reached rather than the reverse. Colonel Miller's letters to Mr. Shefler dated October 10, 1980, and May 26, 1981, respectively USOC Exhibits 7 and 8, as well as its letter to Intelicense dated October 9, 1981, USOC Exhibit 9, continue to make the USOC position clear to the effect that Intelicense or its sublicensees have no right to distribute merchandise bearing copyrighted Olympic Pictograms in the United States and insisting that Intelicense cease and desist from contacting corporate sponsors in the United States.

7. Intelicense's letter of December 4, 1981, USOC Exhibit 10, after expressing "puzzelment" [*sic*] at the contents of the USOC letter of October 9, 1981, speaks of working "together" for the benefit of all athletes worldwide associated with IOC.

8. Colonel Miller's letter of January 4, 1982, to Mr. Shefler contained in USOC Exhibit 11 and replying to the Shefler letter of December 4, 1981, again spells out very clearly the position of the USOC that "any attempts to strike corporate agreements" involving the use of Olympic terminology or Olympic logos in the United States is contrary to the IOC "rules" 6 and 53 as well as contrary to Public Law 95-606, the Amateur Sports Act of 1978.

9. The 1978 Olympic Charter Provisional Ed. (USOC Exhibit 36), which the parties agree governs here, in Rule 6 thereof provides that

> The Olympic flag, the Olympic symbol and the Olympic motto are exclusive property of the IOC.
>
> The Olympic flag has a plain white background, with no border to it. In the centre of the flag are five interlaced rings (hereinafter called "the Olympic rings")—blue, yellow, black, green and red—arranged in that order from left to right, the blue coloured ring being placed high up on the left hand side of the flag nearest the flagpole. The flag presented by Baron de Coubertin at the Congress of Paris in 1914 is the regulation model.
>
> The Olympic *symbol* consists of the Olympic rings alone, whether delineated in a single colour or in different colours.
>
> The Olympic *flag* and symbol symbolise the union of the five continents and the meeting of athletes from all over the world at the Olympic Games in a spirit of fair and frank competition and good friendship, the ideal preached by Baron de Coubertin.

The Olympic *motto* "Citius, Altius, Fortius" expresses the aspirations of the Olympic movement.

An Olympic *emblem* is the combination of the Olympic rings with another distinctive sign.

The bylaws pertaining to Rule 6 provide in pertinent part:

1. The IOC is the responsible authority for the protection of the Olympic flag, Olympic symbol and Olympic motto which are its exclusive property. It shall take every appropriate step possible to obtain their legal protection on a national and international basis. It shall also lend its support to efforts the NOCs must make to obtain the protection of the Olympic flag, symbol and motto for the IOC within their country.

2. Every NOC shall be responsible to the IOC within its country for the due observance of Rule 6 and its bye-law. It shall take steps to secure that any use of the Olympic flag, symbol or motto which is in breach of this rule and bye-law thereto shall be discontinued.

4. Except for the official Olympic day, NOCs may only make use of the Olympic flag, symbol or motto provided that they have the express approval of the IOC to do so.

6. An emblem may be created and registered by an NOC or an OCOG. In this case, the protection thus obtained shall not thereby destroy or prejudice any rights of the IOC. The design of an Olympic emblem must be submitted to the IOC Executive Board for approval. Such approval is subject to the fact that there is no risk of confusion between that emblem and the Olympic symbol (the five rings alone).

> 11 The emblem of the IOC, as well as those of the above-mentioned OCOGs and those of other NOCs may not be used on the territory of an NOC without its prior approval.

"NOCs" are National Olympic Committees such as the USOC, which is independent from but adheres to the charter of the IOC. "OCOGs" are Organizing Committees such as the Los Angeles Organizing Committee (LAOCOG) to which the NOCs delegate their responsibilities under Rules 51-68 of the Charter.

10. As found by this court in CA 83-44 (April 27, 1983)

> The [U.S. Olympic Committee's] primary purpose is to supervise the raising and expending of funds to field American teams for the winter and summer Olympic Games. These funds are raised by selling the right to associate a product with the Olympic Movement and by soliciting contributions from private individuals in exchange for items of merchandise displaying the Olympic symbol—five interlocking rings—in combination with various graphics and other Olympic-related terminology.

The USOC is federally chartered; it organizes and implements, as well as finances, the representation of the United States in the Olympic games.

11. On the uncontradicted testimony of Colonel Miller, which the court finds credible, the court finds that there are 153 countries with National Olympic Committees, that the USOC is unique among them in not having formal support from the government, that the USOC with an $80.1 million budget receives some 44.6% of its income from its 44 corporate sponsors and 36%

from contributions and spends less than 8% for the purpose of sending athletes to the games, using the balance to operate a training center program and a sports medicine center, as well as educational programs and the National Sports Festival. The USOC budget is about twentieth in the world in rank, with the U.S.S.R. spending most on the Olympics and East Germany the next.

12. The USOC rejected the Intelicense program and proposals for the marketing of pictograms because it would dilute the market in terms of the USOC's obtaining corporate sponsors and because the Intelicense proposal would also tend to dilute the market for the up to two million gold and fifty million silver coins to be minted by the United States Mint and sold pursuant to U.S. law under the agreement between the Treasury of the United States and USOC contained in USOC Exhibit 20.

13. The USOC has entered into contractual agreements with approximately 100 of the NOCs whereby they will receive 4% of the proceeds from the gold coins which will sell for $250 or the silver coins which will have a $10 surcharge. Direct mail, with "donor award" items such as key chains and belt buckles using the Olympic symbol as an incentive, is a principal method of fund-raising by the USOC for individuals.

14. The USOC conducts a corporate participation program to obtain funding from business. Under this program, participants or sponsors are authorized to identify one or more products or services with the USOC, the U.S. Olympic Team or with the United States

Olympic Training Center during a four-year Olympiad. Only one participant is authorized exclusively by the USOC in any category of products or services. Corporations participating in this program make a minimum guaranteed monetary contribution to the USOC; they also contribute products or services.

15. Intelicense's confidential list of products and sublicensees as set forth in USOC Exhibit 22 would if marketed in the United States conflict with USOC corporate participation agreements with only a few exceptions, certain maritime products, trade premiums and incentives and leather accessories (although there is an agreement with Levi Strauss covering accessories in general). The Intelicense list includes costume jewelry, T-shirts, wind jackets, sweatshirts, activewear, coins, ingots, sportswear, shirts, suits, ties and belts, among others. Intelicense or its sublicensees commenced marketing pictogram ingots and a pictogram duffle bag in the United States but withdrew from these areas.

16. The USOC emblem is an escutcheon with five rings and in some cases a torch, the letters USA being superimposed over the five rings. The LAOCOG emblem consists of a star in motion with the five rings. These emblems have been approved by the IOC, which recognizes USOC authority in respect to the use of the Olympic symbol in the United States. This is true even though the IOC has in the past used the symbol with no notice of copyright.

17. There is an agreement between the IOC and the USOC in reference to the use of the Olympic symbol (Intelicense Exhibit B), but as a result of Subparagraph

C of Article 2 the obligation provided for in Article 1 of the agreement may be

> considered as suspended by the USOC when there is no agreement in force between the International Olympic Committee and the USOC concerning the conditions under which the International Olympic Committee will grant authorizations for the use of the Olympic symbol in the United States of America and concerning the part of the USOC in any revenue that the IOC obtains for granting such authorizations.

There was no proof that any such agreement concerning conditions and revenue is in force and the USOC therefore properly considers the obligation provided for in Article 1 suspended by virtue of Article 2C.

18. One important and the court finds a typical USOC corporate sponsor is Levi Strauss & Company, its sponsorship or participation agreement being USOC Exhibit 18. Levi Strauss will be investing $50 million in a four-year public relations and promotion program in connection with the forthcoming Olympic Games and will be using Olympic emblems in the United States and at Los Angeles in connection with the advertising of Levi Strauss products. Levi Strauss sells in Sears, Penney's, Mervin's and other large chains some $2 billion worth of merchandise per year. To date it has invested in excess of $60 million in products bearing the Olympic logo. Levi Strauss sought to do business with the NOCs of various other countries but was able to negotiate contracts only with Canada, Mexico, and Japan. Exclusively is a vital component of the Levi Strauss sponsorship; if it did not have an exclusive arrangement in connection with its

products for the use of the Olympic symbols, it would not deal with the USOC. The Olympic five rings symbol is part and parcel of the exclusive commitment.

19. Intelicense was founded in 1968 as a Swiss corporation. It has a valid license from the IOC to use the Olympic symbol in connection with its pictograms.

20. Under the IOC arrangements with Intelicense 10% of all revenue generated goes to the NOC of a cooperating country and 45% to the IOC, with 45% to Intelicense and Intelicense absorbing all expenses. Underdeveloped countries would benefit from Intelicense revenues. Several countries have signed cooperative agreements with Intelicense or its sublicensees.

21. International Sports Marketing, Inc. (ISM), has a valid sub-license from Intelicense to market, world wide, the IOC official olympic pictograms on products made of precious, semi-precious and non-precious metal ingots, medals and coins.

III. Conclusions of Law.

Both the IOC license to Intelicense and the latter's sublicense to ISM are subject as a matter of law to the legal requirement that the consent of the USOC be obtained before marketing products in the United States. At all times Intelicense knew that the consent of the USOC woud have to be obtained for purposes of marketing the IOC official pictograms in the United States. Under Article 2 of the agreement of October 1, 1979, between the IOC and Intelicense, Intelicense "assume[d] all fees that might have to be paid to National Olympic Committees or organizing committees

of the Olympic Games if he desires to obtain their cooperation." Under Article 8 of the same agreement, the IOC had the duty to inform the National Olympic Committees of the substance of the agreement with the pictograms appended and to "ask them to cooperate with the agent according to the conditions which the agent shall negotiate directly with [them]." Under Article 2 of the agreement of October 23, 1979. Intelicense also assumed "all fees that might have to be paid to the Olympic committees or organizing committees of the Olympic Games, if he desires to obtain their cooperation." Under Article 7 of that agreement the IOC also is to inform the NOCs of the substance of the agreement and to "ask them to cooperate with the agent according to the conditions which the agent shall negotiate directly with them." The covering letter of November 2, 1979, from the IOC to the NOCs refers to the fact that Intelicense "will undoubtedly need your cooperation" both in order to find clients and to bring to light cases of unlawful use. It says "the company will contact you directly and you will be free to enter into an agreement with Intelicense concerning your share of receipts earned by Intelicense on your territory." It adds the hope of the IOC that the cooperation with be "of a productive nature" and that "your NOC will thus be provided with a new source of income." This letter, like the agreements themselves, looks towards future negotiations between the NOC, here the USOC, and Intelicense. Intelicense was unsuccessful in obtaining the "cooperation" of the USOC under any terms or conditions, but Intelicense knew by virtue of its contracts with the IOC and those letters that it would

have to have that cooperation. The covering letter of January 21, 1980 relative to summer pictograms from the IOC to the NOC is to the very same effect.

Intelicense and ISM's pictograms feature the five ring symbol of the IOC for the purpose of trade to induce the sale of goods and the USOC has not consented to this use of the Olympic symbol. The fact that the symbol was combined with the pictogram so as to be an "emblem" is immaterial under the Amateur Sports Act of 1978, 36 U.S.C. §380,[1] which requires the consent of the USOC for any commercial use of the Olympic symbol within the United States.

The congressional intent in enacting section 380 was to promote the U.S. Olympic effort by entrusting to the USOC alone the right to use and control the commercial exploitation of Olympic designations in the United States. Since the USOC is not supported by government funds but by contributions from the private sector, the Act expressly empowers the USOC to authorize "contributors and suppliers" to use the Olympic symbol and subjects anyone who uses the symbol "for the purpose of trade" without the consent of the USOC to civil sanctions in actions brought by it. *See generally Stop the Olympic Prison v. United States Olympic Committee,* 489 F. Supp. 1112 (S.D.N.Y. 1980), where the plaintiff's poster was not used "for the purpose of trade" or "to induce the sale of any goods or services or to promote any theatrical exhibition, athletic performance or competition" and the court hed that this use of the Olympic symbol did not violate the statute, 489 F. Supp. at 1121. The court nevertheless recognized that the purpose of section 380 was "to establish strong

[1] Text of 36 U.S.C. §380 appears in full in this footnote. But is not reproduced here.

protection for the Olympic symbols, in part to insure the market value of licenses for their use. Recent experience has shown such licensing to be a substantial inducement for contributions from a wide variety of commercial corporations, and the drafters of subsection (b) appear to have this certainly in mind." *Id.* at 1120. It is precisely because Intelicense and ISM have incorporated the symbol into pictograms solely "for purposes of trade" and "to induce the sale of . . . goods" that the statute prohibits such use without USOC consent.

Intelicense and ISM argue that the definition of "symbol" contained in the IOC charter should be incorporated into section 380 and that the IOC has greater rights to the Olympic symbol than does the USOC. The contention is that the pictograms are emblems and that section 380 only forbids use of the Olympic "symbol." But whether or not the pictograms may be defined as "emblems," each pictogram contains the five ring Olympic symbol, and the symbol is there used solely to "induce the sale of" the pictograms. The statute does not merely forbid marketing the Olympic symbol, it forbids the *use* of the Olympic symbol without the consent of the USOC. *See United States Olympic Committee v. International Federation of Body Builders* (D.D.C. No. 81-296, Nov. 1, 1982), at 20.

The IOC Charter cannot take precedence over an act of Congress, but even under the Charter and the bylaws attached thereto, it is and has been recognized that each NOC in its own country has jurisdiction as to marketing and used the symbol or emblems. Bylaw 1 to Rule 6 of the 1978 IOC Charter requires the IOC to lend its support to efforts the NOCs must make to obtain the

protection of the Olympic flag, symbol and motto for the IOC within their country and makes the NOCs responsible to the IOC for the due observance of Rule 6 and its bylaws, requiring the NOC to "take steps to secure that any use of the Olympic flag, symbol or motto which is in breach of the Rule and bylaw shall be discontinued." Paragraph 11 of the bylaw provides that "the emblems of the IOC, as well as those of the above mentioned OCOGs and those of other NOCs may not be used on the territory of an NOC without its prior approval." Thus, even if the pictograms are emblems, they "may not be used on the territory of an NOC without its prior approval." Thus if the IOC had in fact contemplated that the pictograms could be used without agreement on the part of the USOC it would be in violation of its own charter. But as above stated at all times the IOC and Intelicense were well aware that the cooperation of the USOC would have to be secured were the pictograms to be marketed in the United States.

Nothing in the legislative history of the Amateur Sports Act is to the contrary. While the word "symbol" was specifically used instead of the word "emblem" for "clarity and consistency" with the Olympic charter, see 1978 U.S. Code Cong. & Ad. News 7495, it is the use of the "symbol" that is prohibited without the consent of the USOC and such use is made in an emblem such as the "official" pictograms.

Nor do the copyright registrations introduced in evidence give Intelicense or ISM the right to use the Olympic symbol in violation of section 380. The Copyright Act expressly provides that "nothing in this Title annuls or limits any rights or remedies under any

other Federal statute." 17 U.S.C. §301(d). Moreover, *Bourjois v. Katzel*, 260 U.S. 689 (1923), established the principle of the territoriality of trademarks. As put by *Bell & Howell v. Masel Supply Co.*, 548 F. Supp. 1063, 1066 (E.D.N.Y. 1982), the protection of a trademark in a certain country depends exclusively on the law of that country. The law of the United States is clearly expressed in 36 U.S.C. §380.

True, there was a diplomatic conference for the adoption of a treaty in Nairobi, Kenya, involving the protection of the Olympic symbol. The treaty as agreed upon gives the IOC worldwide control over the use of the Olympic symbol. But the United States rejected the treaty as being in conflict with United States law and it has simply refused to subscribe to the treaty. As put in a memorandum to leaders of patent and trademark associations by Michael K. Kirk, Assistant Commissioner for External Affairs and United States representative to the Nairobi Conference, "the final version of the treaty adopted in Nairobe in 1981 is in direct conflict with U.S. law which vests the U.S. Olympic Committee with the authority to govern the use of the Olympic symbol in the United States. Accordingly the United States cast the lone dissenting vote against the treaty on the Protection of the Olympic symbol at the Diplomatic Conference in 1981 and has no plans to adhere to it."

None of the foregoing conclusions are changed by the provision in 17 U.S.C. §104(b) providing for the protection of copyrightable matter which is created by foreign authors or first published in foreign countries. The specific statute, the Amateur Sports Act of 1978,

controls. And while Intelicense argues that its use is covered by subsection 380(a)(3), which permits the use of Olympic marks that truly represent the users' association with the IOC, it still may do so only with the consent of the USOC.

Intelicense and ISM finally argue that the statutory interpretation suggested by the USOC would require the invalidation of section 380(a)(1) and (c) as an unconstitutional taking of property since the symbol has long been the exclusive property of the IOC and is valid in Switzerland and recognized in this country by virtue of treaty obligations and the Copyright Act. We are advised that copyright is a form of property right. *See Remick Music Corp. v. Interstate Hotel Co. of Neb.*, 58 F. Supp. 523 (D. Neb. 1944), *aff'd*, 157 F.2d 744 (8th Cir. 1946), *cert. denied*, 329 U.S. 809 (1947); *see* 1 M. Nimmer, The Law of Copyright §1.03[A] at 1.30.1-.2. The copyright of the IOC, it is argued, would be arbitrarily transferred to the USOC. But this argument fails to take into account the Amateur Sports Act and its legislative history. What the Act does is first to recognize in section 380(a)(1) that a symbol consisting of five interlocking rings is "the symbol of the International Olympic Committee." And what it does is to protect against the use of that IOC symbol for the purpose of trade or to induce the sale of any goods or services or to promote any theatrical exhibition, athletic performance or competition "without the consent of" the USOC and gives the USOC the right to bring suit for the remedies provided in the Act or the Trademark Act of 1946. The statute also gives the USOC the right to authorize contributors and suppliers to use its tradename as well

as "any trademark, symbol, insignia or emblem of the International Olympic Committee or of the corporation" in advertising. Section 380(b). This is because by virtue of the corporate powers granted in section 375 the USOC represents the United States as its National Olympic Committee "in relation with the International Olympic Committee." And it is because the objects and the purposes of the USOC as statutorily set forth in section 74 give it "exclusive jurisdiction either directly or through its constituent members of committees, over all matters pertaining to the participation of the United States in the Olympic games ... including the representation of the United States in such games, and over the organization of the Olympic games ... when held in the United States." Thus, rather than transfer the property of the IOC to the USOC what the Act does, *inter alia*, is to give the USOC the power and duty to protect the IOC symbol in the United States in accordance with the IOC charter and bylaws and in light of the relationship between the USOC and the IOC. The statute is entirely proper and is protective of the IOC, not harmful to it.

Judgment for USOC in accordance with the foregoing may be entered and each defendant including its respective successors or assigns, officers, representatives, agents, servants, employees and any related company, as defined in 15 U.S.C. §1127, shall be and are hereby permanently enjoined from using or causing to be used in any form without the consent of the United States Olympic Committee for the purposes of trade or to induce the sale of any goods or services in the United States, the Olympic symbol or any emblem containing

five interlocking rings or any colorable imitation or simulation thereof. There being no just reason for delay, since the right to an injunction is the only important question presented by the litigation and it is most unlikely that the determination of such damages as may have been suffered by USOC would give rise to a legal question worthy of review, judgment may be entered under Fed. R. Civ. P. 54(b), reserving for thirty days from the date of entry thereof the right of USOC to apply for a hearing on damages.

JAMES L. OAKES
United States Circuit Judge
sitting by designation as
United States District Judge

Second Opinion of the United States Court of Appeals for the Second Circuit

[4521] UNITED STATES COURT OF APPEALS
For the Second Circuit

Nos. 1324, 1331—August Term, 1983

(Argued May 30, 1984 Decided June 18, 1984)

Docket Nos. 83-9025, 83-9063—District

UNITED STATES OLYMPIC COMMITTEE,
Plaintiff-Appellee,

—against—

INTELICENSE CORPORATION, S.A.,
INTERNATIONAL SPORTS MARKETING, INC.,
Defendants-Appellants.

INTERNATIONAL SPORTS MARKETING, INC.,
INTELICENSE, S.A.,
Plaintiffs-Appellants,

—against—

UNITED STATES OLYMPIC COMMITTEE,
Defendant-Appellee.

[4522] Before:

FEINBERG, *Chief Judge,*
KAUFMAN and PIERCE, *Circuit Judges.*

Appendix—Second Opinion of the United States Court of Appeals for the Second Circuit.

Intelicense Corp. appeals from a judgment entered by the United States District Court for the District of Vermont (James L. Oakes, *Circuit Judge*, sitting by designation), permanently enjoining it under 36 U.S.C. §380, from using the Olympic symbol to induce the sale of goods or services within the United States, without the consent of the United States Olympic Committee.

Affirmed.

PETER F. LANGROCK, Langrock Sperry Parker & Wool, Middlebury, VT, for *Defendants-Appellants.*

ROBERT D. RACHLIN, Downs Rachlin & Martin, Burlington, VT, and

RICHARD G. KLINE, Edward T. Colbert, Joseph D. Lewis, Beveridge, DeGrandi & Kline, Washington, D.C., *of Counsel, for Plaintiff-Appellee.*

[4523] KAUFMAN, *Circuit Judge:*

We are asked today to decide whether the five-ring Olympic symbol can be commercially marketed within the United States without the consent of the United States Olympic Committee (USOC). While the roots of the Olympic Games can be traced to the first Olympiad held in Ancient Greece in 776 B.C., the temporal spectrum necessary to resolve this dispute is far more modest, extending over the six-year period since the promulgation of the Amateur Sports Act of 1978 (the "Act"), 36 U.S.C. §§371-96. The fundamental purpose of that Act was to safeguard the USOC's ability to raise the financial resources that are a critical component of America's capacity to send world-class amateur athletes

into international competition without the massive government subsidies enjoyed by competitors from other nations.

In view of the language and purpose of 36 U.S.C. §380 (§380), we hold that the USOC's consent is a prerequisite to marketing the Olympic symbol in the United States. Because appellant Intelicense Corp. (Intelicense) failed to secure USOC permission, we affirm the judgment of the district court enjoining Intelicense from commercially using the Olympic symbol in this country. We shall first set forth those facts pertinent to an understanding of this dispute and then proceed to discuss Intelicense's numerous legal arguments.

I

This case concerns the right of Intelicense, a Swiss corporation, and its sublicensee, International Sports Marketing, Inc. (ISM), a Vermont corporation, to use, market, and sublicense within the United States the offi- [4524] cial pictograms of the International Olympic Committee (IOC) without the consent of the USOC. The pictograms at issue are graphic designs of athletes participating in various summer and winter Olympic sports against a backdrop that explicitly incorporates the Olympic symbol, consisting of five interlocking rings.

In October of 1979, Intelicense entered into two agreements with the IOC. Under these agreements, Intelicense was granted the exclusive worldwide rights to be the marketing agent for the pictograms, acquiring 60% of the licensing revenues while the IOC would receive 40%. Moreover, as a prerequisite to marketing the pictograms in the territory of each National Olympic Committee (NOC), the agreements provided that Intelicense must first secure the approval of each NOC.

Over the course of the following year, Intelicense affirmatively sought to obtain this approval from the USOC. Negotiations between Intelicense's director, Stanley Shefler, and the USOC's Chief Executive Officer, Colonel F. Don Miller, however, failed to provide an accord. At trial, Colonel Miller testified that the Intelicense proposal for marketing the pictograms would "dilute the market in terms of the USOC's obtaining corporate sponsors" and would expressly contravene the USOC's money-making activities that are critical to the continued existence of the United States Olympic team. Accordingly, the USOC unequivocally refused to consent to Intelicense's proposal. Nevertheless, Intelicense proceeded to license the use of pictograms on products marketed in the United States. This prompted the USOC to file suit[1] in 1982, demanding that Intelicense and its [4525] licensees cease and desist from contacting corporate sponsors in the United States.

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[1] The USOC filed suit against Intelicense and its licensees, Millsport, Inc. and Sport Graphics, Inc. in the United States District Court for the District of Columbia *USOC v. Millsport, Inc.* Permanent injunctions were entered against these two sublicensees under §380, and, consequently, they are no longer parties to the instant action. Sublicensee ISM, however, was added and remains a party to the suit.

In a separate action, ISM filed suit against the IOC and the USOC in the United States District Court for the District of Vermont, alleging interference with its contractual rights pursuant to its sublicensing agreement with Intelicense.

On May 31, 1983, the United States District Court for the District of Columbia ordered the transfer of *USOC v. Millsport, Inc.* to the District of Vermont. *USOC v. Millsport, Inc.* was consolidated with *ISM v. IOC & USOC* on September 9, 1983, and by stipulation of the parties, IOC was dismissed from the case. On October 6, 1983, the USOC applied for a preliminary injunction. Pursuant to Fed. R. Civ. P. 65, the District Court ordered the consolidation of the trial on the merits and the hearing of the application for a preliminary injunction.

Appendix—Second Opinion of the United States Court of Appeals for the Second Circuit.

Circuit Judge Oakes, sitting by designation in the district court, permanently enjoined Intelicense from using the Olympic symbol for the purposes of commercial trade within the United States, without the consent of the USOC. He concluded that Intelicense's failure to secure the consent of the USOC expressly contravened §380, as well as the 1978 version of the IOC charter, each of which requires USOC approval as a prerequisite to marketing or licensing any Olympic emblems or symbols in this country.

On appeal, Intelicense and ISM raise a litany of claims in an attempt to evade the strictures of §380. As we will explain, however, their efforts at statutory and semantical legerdemain are unsuccessful.

II

An understanding of this case is predicated largely upon a complete appreciation of the language and pur- [4526] pose of The Amateur Sports Act of 1978.[2] This statute, enacted in 1978, empowers the USOC to exercise exclusive jurisdiction over all matters pertaining to the participation of the United States in the Olympic Games. The Act further vests the USOC with the responsibility of financing the participation of the United States in the Olympic Movement. Because the USOC is the only NOC that does not receive formal financial assistance from the

[2] Also relevant to a complete understanding of this case are the 1978 and 1983 revisions to the IOC Charter. The 1978 version, cited with approval in the legislative history of the Amateur Sports Act, requires the prior consent of a particular territory's National Olympic Committee before the Olympic emblem can be marketed within the territory. According to the 1983 version, the "Olympic emblem may be exploited so long as the exploitation does not cause serious damage to the National Olympic Committee concerned."

Government, financing the United States Olympic team poses unique obstacles. Consequently, the marketing of the Olympic symbol in the United States assumes great importance.[3] Protecting the value of the Olympic symbol was, therefore, a significant factor that led to passage of the Act. *See* 124 Cong. Rec. H10,754 (daily ed. Sept. 26, 1978) (remarks of Rep. Danielson).

The relevant portions of §380 so essential to a determination of this case follow:

> (a) Without the consent of the [USOC], any person who uses for the purpose of trade, to induce the sale [4527] of any goods or services, or to promote any theatrical exhibition, athletic performance, or competition—
>
> (1) the symbol of the IOC, consisting of five interlocking rings; or. . .
>
> (3) any trademark, trade name, sign, symbol, or insignia falsely representing association with, or authorization by, the IOC or the [USOC] . . .
>
> shall be subject to suit in a civil action by the [USOC] for the remedies provided in the . . . Trademark Act.

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[3] Indeed, during the period of 1980-1982, the USOC received 45% of its income from its 44 corporate sponsors. Under the USOC's corporate sponsorship program, each participant is authorized to use the USA Olympic emblem which contains the Olympic rings in exchange for a minimum guaranteed monetary contribution to the USOC. As the trial court concluded, if the USOC could not grant exclusive rights to market the Olympic symbol, the number of corporate participants would greatly be reduced and the USOC would find itself unable to raise the funds required for participation in the Olympic Movement.

It is clear that the Congressional intent in enacting §380 was to promote the United States Olympic effort by entrusting the USOC with unfettered control over the commercial use of Olympic-related designations. This would facilitate the USOC's ability to raise those financial resources from the private sector that are needed to fund the United States Olympic Movement. One court has reasoned that a primary purpose of §380 was "to insure the market value of licenses." *Stop the Olympic Prison v. United States Olympic Committee,* 489 F. Supp. 1112, 1120 (S.D.N.Y. 1980). The trial court here agreed, as has each court to have passed on the intent of §380. *See International Sports Marketing, Inc. v. International Olympic Committee, and United States Olympic Committee,* No. 83-44 (D. Vt. 1983); *United States Olympic Committee v. Union Sport Apparel,* 220 U.S.P.Q. 526 (E.D. Va. 1983); *International Olympic Committee v. San Francisco Arts and Athletics,* 219 U.S.P.Q. 982, (N.D. Cal. 1982), *aff'd,* No. 82-4467 (9th Cir. 1983); *United States Olympic Committee v. International Federation of Body Builders,* 219 U.S.P.Q. 353 (D.D.C. 1982); *United* [4528] *States Olympic Committee v. David Shoe Co., Inc.,* No. C-1-82-596 (S.D. Ohio 1982).

Because §380 is phrased disjunctively, a violation of any subsection properly animates the statute's panoply of remedial provisions. Intelicense claims, however, that because it is not falsely associated with the IOC, its conduct falls outside the proscriptive ambit of subsection (a)(3) and, therefore, cannot be reached by the remaining provisions of §380. But, such a construction constitutes a patent misreading of the statute and would render

§380(a)(1), as well as the other subsections, superfluous. The view urged is contrary to this Circuit's established rules of statutory construction. *See Allen Oil Co., Inc. v. C.I.R.*, 614 F.2d 336, 339 (2d Cir. 1980) (a statute should be construed to give force and effect to each of its provisions rather than render some of them meaningless); *see also United States v. Blasius*, 397 F.2d 203 (2d Cir. 1968), *cert. dismissed*, 393 U.S. 1008 (1969); *United States v. Dinnerstein*, 362 F.2d 852 (2d Cir. 1966). Accordingly, a violation of §380 can properly be grounded upon a violation of subsection (a)(1) alone, notwithstanding Intelicense's exhortations to the contrary.

When viewed against the factual landscape present in the instant case coupled with Congress's intent in enacting §380 and the plain statutory language of subsection (a)(1), we cannot imagine a more blatant violation of the Act. Indeed, it is uncontroverted that Intelicense made commercial use of the Olympic symbol to induce the sale of goods in the United States, without having secured the consent of the USOC.[4] This is all that subsection (a)(1) requires. *See International Olympic Committee v. San Francisco Arts and Athletics, supra.*

[4529] In an effort to circumvent the result clearly dictated by (a)(1), Intelicense contends that (a)(1) is not implicated in this action because the pictograms display the Olympic rings in conjunction with another design. But, this claim also is entirely without merit. There is absolutely nothing in the legislative history of §380, or elsewhere, to support the argument that the Olympic

[4] In fact, the USOC had explicitly informed Intelicense of its refusal to consent to such conduct.

symbol loses its identity when combined with other elements. Moreover, such a strained reading of (a)(1) vitiates the very interests sought to be safeguarded by the enactment of §380. This statute does not merely prohibit marketing the Olympic symbol itself, but more significantly, it forbids any commercial use without the consent of the USOC. *See United States Olympic Committee v. International Federation of Body Builders, supra.*

In addition, Intelicense maintains that §380 incorporates not only the Trademark Act's remedial provisions, 15 U.S.C. §§1116-1118, but also its standards for violation, 15 U.S.C. §1114(1)(a) (relief can be granted only where a trademark is used in a manner "likely to cause confusion, or to cause mistake, or to deceive"). Intelicense urges, absent an iota of support in the statute or case law, that we incorporate the more restrictive "likelihood of confusion" standard into the provisions of §380. The upshot of this claim would be to supplant the "use without the USOC's consent" standard expressly set forth in §380, and dramatically constrain the effective scope of the statute, as well as to frustrate the Act's unequivocal purpose. We are in agreement with the cogent analysis provided by one court, which stated that "Congress must have meant to place less of a burden on a plaintiff under a section 380 cause of action than that placed upon plaintiff suing under the Trademark Act alone." *International Olympic Committee v. San Francisco Arts and Athletics, supra,* 219 U.S.P.Q. at 986.

[4530] Intelicense posits, moreover, that §380 is unconstitutional as applied to the facts of the instant action because it represents a taking of property. We find this argument to be equally unsupportable. The taking in question allegedly stems from the USOC's authority, derived from §380, to block Intelicense's agreement with the IOC, whereby the former was granted the exclusive worldwide rights to be the marketing agent for the Olympic pictograms. Intelicense cannot possibly demonstrate, however, that its property has been taken by the United States Government via the enactment of §380. Although the Amateur Sports Act was enacted in 1978, the agreements between Intelicense and the IOC were not entered into until October of 1979. Therefore, the enactment of §380 could not have deprived Intelicense of any property because it had no interest in the pictograms or the Olympic symbol at the time the Act became law.[5] Only the owner of an interest in property at the time of the alleged taking his standing to assert that a taking has occurred. *See United States v. Dow*, 357 U.S. 17 (1958); *Lacey v. United States*, 595 F.2d 614 (Ct. Cl. 1979). Accordingly, only the IOC would have standing to raise a taking claim.

Perhaps cognizant of this legal principle, Intelicense alternatively posits that it has standing to assert a taking claim on behalf of the IOC, as its authorized agent. We find that such a claim is belied by the evidence adduced at trial. Indeed, in a letter from the IOC's director, Monique Berlioux, to Intelicense's

[5] Nor is there any allegation that Intelicense possessed a property interest in contemplation of consummating its arrangement with the IOC, prior to the enactment of §380.

director, Stanley Shefler, on October 13, 1980, the IOC explicitly accepted the authority vested in the USOC by §380 to control marketing of [4531] the Olympic symbol in the United States. And in a subsequent letter dated November 5, 1982, Berlioux advised Shefler that "any and all licensing activities should cease in the United States."[6]

Finally, the parties devote considerable attention to alternative sources of authority they believe bear prominently on the outcome of this action. At first blush, the question whether the 1978 or the 1983 version of the IOC Charter applies here might appear significant. The former version expressly disallows the commercial use of the Olympic emblem without the prior approval of the NOC in question, while the latter permits the commercial exploitation of the Olympic emblem, absent

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[6] Because this letter clearly expresses the IOC's position, we find it useful to set forth its contents.

> "Dear Mr. Shefler:
>
> The purpose of this letter is once again to advise you that your company's authority to advertise, market and distribute the official IOC pictograms is only effective to the extent that you have obtained the consent of the respective National Olympic Committees in the countries in which items containing the exact reproduction of the approved IOC pictograms intend to be marketed. As you know, the USOC has advised us that it does not intend to consent to the marketing of any product bearing the IOC pictograms in the United States. In view of this position, you should be advised that any and all licensing activities should cease in the United States.
>
> Should you have any questions concerning the above, I would be happy to discuss them with you.
>
> Very truly yours,
>
> MONIQUE BERLIOUX
> Director"

consent, so long as the NOC concerned is not seriously damaged. It is clear, however, that neither Charter governs this action because of the doctrine of preemption, under which a clear and unambiguous Congressional statutory command is controlling. *See, e.g.*, Note, "A Framework for [4532] Preemption Analysis, 88 Yale L.J. 363, 364-65 (1978). The IOC Charter is not a treaty ratified in accordance with constitutional requirements. *See* art. II, §2, cl. 2.[7] It was not entered into by the head of state or by any other high United States official, nor was it ratified by two-thirds of the Senate. Moreover, the United States did not intend to be bound by the IOC Charter. *See* Restatement of Foreign Relations Law of the United States §115, comment f (1965). Indeed, at a 1981 diplomatic conference in Kenya, the United States cast the lone dissenting vote against a treaty that was to give the IOC worldwide control over the use of the Olympic symbol. The United States opposed the treaty precisely because it would contravene the thrust of §380. Accordingly, the United States' position on the licensing of the Olympic symbol is unequivocal and is encapsulated in §380, and as such, cannot be overborne by the terms of either version of the IOC Charter.[8]

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[7] If the IOC Charter were in fact a treaty, the Constitution states that treaties and acts of Congress are of equal force. *See* U.S. Const. art. VI, cl. 2; *Reid v. Covert*, 354 U.S. 1, 18 (1957).

[8] At most, the 1978 version provides a gloss on Congress's intent in promulgating §380. This is substantiated by the reference to the 1978 Charter in the legislative history of §380, reflecting Congress's desire to achieve at least a modicum of consonance between the two provisions. *See* H.R. Rep. No. 95-1627, 95 Cong. 2d Sess. (1978).

Congress expressly chose to safeguard the United States Olympic movement by enacting §380. We hold that Intelicense has violated both the letter and spirit of §380 by commercially marketing the pictograms in the United States without the consent of the USOC. Accordingly, we affirm the district court's permanent injunction.

Agreement Dated October 23, 1979

AGREEMENT

This agreement has been concluded in Lausanne on the 23rd October 1979 between

1) The International Olympic Committee ("IOC") of Lausanne,

of the one part, and

2) The Intelicense Corporation S.A. ("Agent") of Fribourg,

of the other part.

Whereas the IOC by letter of agreement to Intelicense Corp. S.A. dated October 23/19____ has acquired the sole proprietary rights including copyright in the pictograms designed by Mr. Julien van der Wal, whose photograph(s) is (are) appended hereto, for the whole term, for any country and for any use of such rights,

Whereas the IOC desires to exploit the pictograms commercially,

Whereas the Agent is ready to handle this exploitation under the conditions laid down hereunder,

the following has been agreed between the parties:

Article 1

The Agent is herewith appointed for 70 (seventy) years the exclusive world licensing agent for the use of the pictograms or any party thereof, as from 1st September 1979, except for the use by the Organizing Committee of the Summer Olympic Games for the Games themselves and the official publications which the Organizing Committee has to issue under the "Olympic Charter", to the exclusion of any other use whatsoever by that Committee. In case the Agent ceases to exist for any

reason whatsoever before the expiry of the full term, this Agreement shall terminate at the date of such legal disappearance but the IOC shall keep its right to its shares of the royalties resulting from licensing agreements still in force.

Article 2

The Agent shall assume world responsibility for all administration and cost accounting fees, taxes, contract filing, approval of products subject to the provisions of this Agreement, sub-agent commissions, publicity, public relations and related administration expenses.

The Agent shall have the world exclusive right to license or sublicense in his own name the use of the pictograms.

The Agent also assumes all fees that might have to be paid to National Olympic Committees or Organising Committees of the Olympic Games if he desires to obtain their co-operation.

The IOC shall have no expenses whatsoever in connection with the licensing referred to above. Subject to article 6, in case of judicial litigation the lawyers' and any other fees shall be borne by the Agent. In such case, if required, the IOC shall co-operate with the Agent who may use lawyers of his choice and conclude the litigation by the most favourable settlement possible.

Article 3

In order to preserve the IOC's copyright, the Agent shall print or cause to be printed and distributed in sufficient quantity a brochure similar to that he produced for the Munich/Montreal pictograms and shall print or cause to be printed on the first page the

following mention: " © I.O.C. 1979". The same mention shall appear inside the brochure under each of the 21 individual pictograms.

If at any time an infringement is discovered, the Agent shall do his utmost to obtain, by negotiation or action in the courts, the appropriate indemnification which shall be treated for the purpose of this Agreement as a royalty, after deduction of legal costs, if any.

The Agent shall keep a registry of all licensing or sublicensing agreements and the registry shall be at all times open for inspection by the IOC.

Article 4

The pictograms shall be called "the official IOC Summer Olympic pictograms" and the Agent may use this designation in all his licensing or sublicensing agreements.

Article 5

The Agent shall not license nor allow a sub-agent to license the use of the pictograms for any product or services incompatible with the Olympic ideals and aims as defined by the "Olympic Charter". No manufacturer, wholesaler or retialer of alcoholic beverages, tobacco or tobacco products or pornographic articles and publications shall obtain a license under this Agreement.

Article 6

The gross revenue from licensing or sub-licensing of the pictograms, without any deduction whatsoever, shall be shared as follows:

The IOC shall be entitled to inspect or to have inspected at its cost at all times by persons of its choice all books, accounts, agreements and other documents kept by the Agent referring to the performance of this Agreement.

Article 7

The IOC shall inform the National Olympic Committees of the substance of this Agreement, with the pictograms appended, ask them to co-operate with the Agent according to the conditions which the Agent shall negotiate directly with them, inform him of any use of these pictograms and refer to him any request for licenses.

Article 8

If the parties so agree, a model licensing agreement shall be drafted jointly to give the Agent a guideline for his further negotiations. The Agent shall be entitled to adapt the model to local requirements. He shall do his utmost to have all royalties due to him abroad transferred to his bank account(s) in Switzerland.

Article 9

Should the Agent infringe this Agreement for reasons which are not beyond his control the IOC may notify him of such infringement by registered letter. If the situation is not rectified within 90 days, a notice of immediate termination of this Agreement may be given.

Notwithstanding the termination, all obligations of the Agent under this Agreement shall subsist until the winding up of all licensing agreements. The Agent shall not be entitled to enter into or allow any sub-agent to

enter into a fresh licensing agreement or to extend a licensing agreement already in existence. The situation shall be identical at the time this Agreement expires.

Article 10

Any dispute arising from this Agreement, if not settled amicably, shall be brought before the Geneva jurisdiction under the relevant Swiss law.

For the Agent
S. R. SHEFLER
S.R.Shefler
INTELICENSE CORP. SA

For the IOC
MONIQUE BERLIOUX
Directeur
Comite' International Olympique

Agreement Dated October 1, 1979

AGREEMENT

This Agreement has been concluded in Lausanne on the 1st October 1979 between

1) The International Olympic Committee ("IOC") of Lausanne,

of the one part, and

2) The Intelicense Corporation S.A. ("Agent") of Fribourg,

of the other part.

Whereas the IOC, by contract with Mr. Alfred Kunzenmann, (attached hereto), the designer of the pictograms used during the 1976 Winter Olympic Games, has acquired the sole proprietary rights including copyright in these pictograms whose photograph(s) is(are) appended hereto, for the whole term, for any country and for any use of such rights,

Whereas the IOC desires to exploit the pictograms commercially,

Whereas the Agent is ready to handle this exploitation under the conditions laid down hereunder,

the following has been agreed between the parties:

Article 1

The Agent is herewith appointed for 70 (seventy) years the exclusive world licensing agent for the use of the pictograms or any part thereof, as from 1st September 1979, except for the use by the Organising Committee of the Winter Olympic Games for the Games themselves and the official publications which the Organising Committee has to issue under the "Olympic Charter", to the exclusion of any other use whatsoever by that

Committee. In case the Agent ceases to exist for any reason whatsoever before the expiry of the full term, this Agreement shall terminate at the date of such legal disappearance but the IOC shall keep its right to its shares of the royalties resulting from licensing agreements still in force.

Article 2

The Agent shall assume world responsibility for all administration and cost accounting fees, taxes, contract filing, approval of products subject to the provisions of this Agreement, sub-agent commissions, publicity, public relations and related administration expenses.

The Agent shall have the world exclusive right to license or sublicense in his own name the use of the pictograms.

The Agent also assumes all fees that might have to be paid to National Olympic Committees or Organising Committees of the Olympic Games if he desires to obtain their co-operation.

The IOC shall have no expenses whatsoever in connection with the licensing referred to above. Subject to article 6, in case of judicial litigation the lawyers' and any other fees shall be borne by the Agent. In such case, if required, the IOC shall co-operate with the Agent who may use lawyers of his choice and conclude the litigation by the most favourable settlement possible.

Article 3

In order to preserve the IOC's copyright, the Agent shall print or cause to be printed and distributed in sufficient quantity a brochure similar to that he produced for the Munich/Montreal pictograms and shall

print or cause to be printed on the first page the following mention: " © I.O.C. 1979". The same mention shall appear inside the brochure under each of the 14 individual pictograms.

If at any time an infringement is discovered, the Agent shall do his utmost to obtain, by negotiation or action in the courts, the appropriate indemnification which shall be treated for the purposes of this Agreement as a royalty, after deduction of legal costs, if any.

The Agent shall keep a registry of all licensing or sublicensing agreements and the registry shall be at all times open for inspection by the IOC.

Article 4

The pictograms shall be called "the official IOC Winter Olympic pictograms" and the Agent may use this designation in all his licensing or sublicensing agreements.

Article 5

The Agent shall not license nor allow a sub-agent to license the use of the pictograms for any product or services incompatible with the Olympic ideals and aims as defined by the "Olympic Charter". No manufacturer, wholesaler or retailer of alcoholic beverages, tobacco or tobacco products or pornographic articles and publications shall obtain a license under this Agreement.

Article 6

The gross revenue from licensing or sub-licensing of the pictograms, without any deduction whatsoever shall be shared as follows:

40% for the IOC
60% for the Agent.

Gross revenue shall mean, in case of litigation and/or withholding taxes, the total revenue received by the Agent after deduction of all litigation fees and expenses, if any, and of such taxes.

At the end of each half calendar year, but for the first time at the end of 1979, the Agent shall send to the IOC a complete statement of the gross royalties received during that half calendar year, together with the corresponding cheque.

The IOC shall be entitled to inspect or to have inspected at its cost at all times by persons of its choice all books, accounts, agreements and other documents kept by the Agent referring to the performance of this Agreement.

Article 7

As an advance payment on the IOC royalty share, the Agent shall remit to the IOC, not later than 15th December 1979, a cheque in Swiss francs equal to the value of 105,000 Austrian Schillings calculated at the current rate of exchange.

Article 8

The IOC shall inform the National Olympic Committees of the substance of this Agreement, with the pictograms appended, ask them to co-operate with the Agent according to the conditions which the Agent shall negotiate directly with them, inform him of any use of these pictograms and refer to him any request for licenses.

Article 9

If the parties so agree, a model licensing agreement shall be drafted jointly to give the Agent a guideline for his further negotiations. The Agent shall be entitled to

adapt the model to local requirements. He shall do his utmost to have all royalties due to him abroad transferred to his bank account(s) in Switzerland.

Article 10

Should the Agent infringe this Agreement for reasons which are not beyond his control the IOC may notify him of such infringement by registered letter. If the situation is not rectified with 90 days, a notice of immediate termination of this Agreement may be given.

Notwithstanding the termination, all obligations of the Agent under this Agreement shall subsist until the winding up of all licensing agreements. The Agent shall not be entitled to enter into or allow any sub-agent to enter into a fresh licensing agreement or to extend a licensing agreement already in existence. The situation shall be identical at the time this Agreement expires.

Article 11

Any dispute arising from this Agreement, if not settled amicably, shall be brought before the Geneva jurisdiction under the relevant Swiss law.

For the Agent
S. R. SHEFLER
S.R. Shefler
INTELICENSE CORP.SA

For the IOC
(as approved by the Finance Commission)
MONIQUE BERLIOUX
Directeur
Comite' International Olympique

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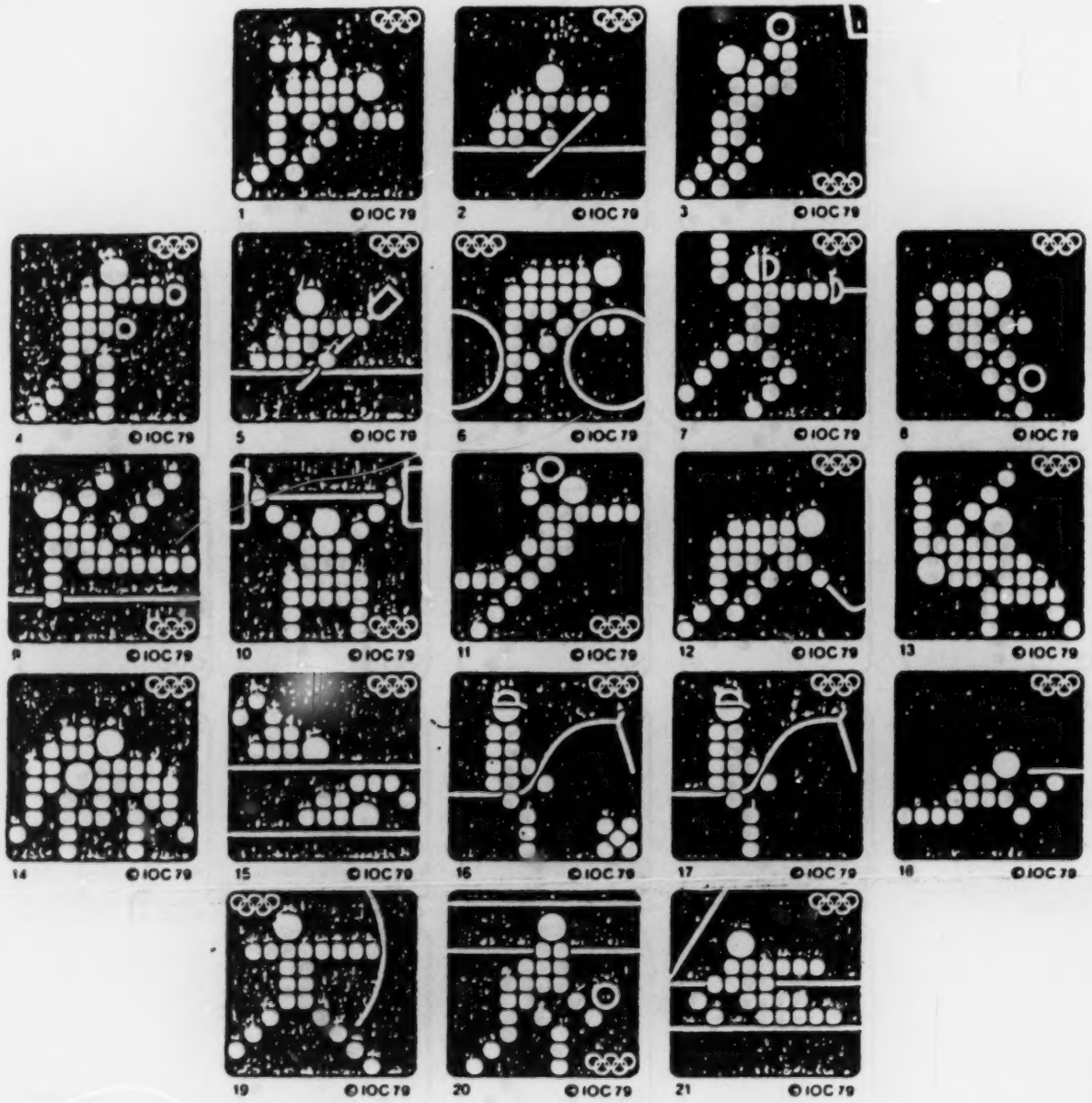

Pictogrammes officiels du CIO pour les Jeux Olympiques d'été

Official IOC Summer Olympic Pictograms

Exclusive world licensing agent for the international Olympic Committee

Intelicense Corp. SA

Case postale 215 1211 Geneva 26
Switzerland Tel. [illegible] Telex 22789

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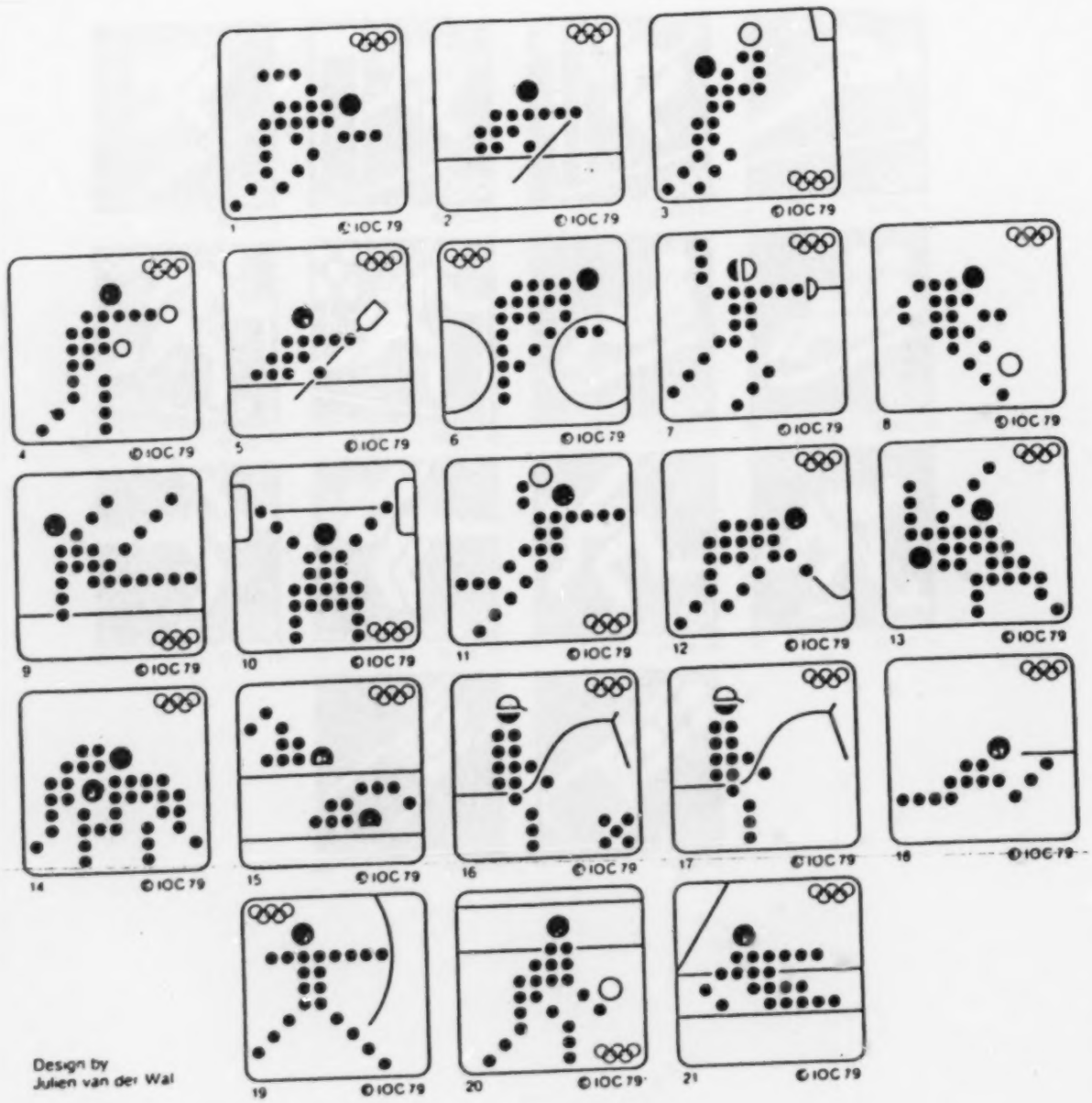

Design by
Julien van der Wal

1 Athlétisme
Athletics

2 Aviron
Rowing

4 Boxe
Boxing

5 Canoë
Canoeing

7 Escrime
Fencing

8 Football
Football

10 Haltérophilie
Weightlifting

11 Handball
Handball

13 Judo
Judo

14 Lutte
Wrestling

16 Pentathlon moderne
Modern Pentathlon

17 Sports équestres
Equestrian sports

19 Tir à l'arc
Archery

20 Volleyball
Volleyball

Pictogrammes officiels
du CIO pour les
Jeux Olympiques d'hiver

Official IOC
Winter Olympic
Pictograms

Exclusive world licensing
agent for the international
Olympic Committee

Intelicense Corp. SA

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No. 84-442 (2)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

INTELICENSE CORPORATION, S.A.,
Petitioner,

v.

UNITED STATES OLYMPIC COMMITTEE,
Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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IN THE

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No. 84-442

INTELICENSE CORPORATION, S.A.,

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UNITED STATES OLYMPIC COMMITTEE,

Respondent.

On Petition For a Writ of Certiorari to The United States Court of Appeals For The Second Circuit

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RESPONDENT'S BRIEF IN OPPOSITION

The respondent United States Olympic Committee respectfully requests that this Court deny the Petition for Writ of Certiorari, seeking review of the Second Circuit's decision in this case.

Respondent has no disagreement with the Petition as to the citation of the decisions below, their reproduction in the appendix to the Petition, the grounds for jurisdiction of this Court or the statute involved with the exception that § 110 of the Amateur Sports Act of 1978 (36 U.S.C. § 380) was not

completely set forth in the Petition (subsections (b) and (c) were omitted). Therefore, § 380 is fully reproduced below.

TITLE 36 UNITED STATES CODE

§ 380. Use of Olympic symbols, emblems, trademarks and names

(a) Without the consent of the Corporation, any person who uses for the purpose of trade, to induce the sale of any goods or services, or to promote any theatrical exhibition, athletic performance, or competition—

(1) the symbol of the International Olympic Committee, consisting of 5 interlocking rings;

(2) the emblem of the Corporation, consisting of an escutcheon having a blue chief and vertically extending red and white bars on the base with 5 interlocking rings displayed on the chief;

(3) any trademark, trade name, sign, symbol, or insignia falsely representing association with, or authorization by, the International Olympic Committee or the Corporation; or

(4) the words "Olympic", "Olympiad", "Citius Altius Fortius", or any combination or simulation thereof tending to cause confusion, to cause mistake, to deceive, or to falsely suggest a connection with the Corporation or any Olympic activity;

shall be subject to suit in a civil action by the Corporation for the remedies provided in the Act of July 5, 1946 (60 Stat. 427; popularly known as the Trademark Act of 1946). However, any person who actually used the emblem in subsection (a)(2) of this section, or the words, or any combination thereof, in subsection (a)(4) of this section for any lawful purpose prior to September 21, 1950, shall not be

prohibited by this section from continuing such lawful use for the same purpose and for the same goods or services. In addition, any person who actually used, or whose assignor actually used, any other trademark, trade name, sign, symbol, or insignia described in subsections (a)(3) and (4) of this section for any lawful purpose prior to enactment of this chapter shall not be prohibited by this section from continuing such lawful use for the same purpose and for the same goods or services.

(b) The Corporation may authorize contributors and suppliers of goods or services to use the trade name of the Corporation as well as any trademark, symbol, insignia, or emblem of the International Olympic Committee or of the Corporation in advertising that the contributions, goods, or services were donated, supplied, or furnished to or for the use of, approved, selected, or used by the Corporation or United States Olympic or Pan-American team or team members.

(c) The Corporation shall have exclusive right to use the name "United States Olympic Committee"; the symbol described in subsection (a)(1) of this section; the emblem described in subsection (a)(2) of this section; and the words "Olympic", "Olympiad", "Citius Altius Fortius" or any combination thereof subject to the preexisting rights described in subsection (a) of this section.

STATEMENT OF PARTIES

Respondent, United States Olympic Committee is a non-profit federally chartered and non governmentally-financed corporation empowered by Congress under the Amateur Sports Act of 1978 to exercise exclusive jurisdiction over all matters pertaining to the participation of the United States in the Olympic Games; to exercise exclusive control over the commercial exploitation in the United States of Olympic-related designations and to shoulder the responsibility for financing the participation of the United States in the Olympic Movement. 36 U.S.C. §§ 374(3), 375(3).

Petitioner, Intelicense Corporation, S.A. ("Intelicense") is a Swiss corporation which is primarily involved in the licensing and marketing of Olympic-related designations, namely pictograms displaying the Olympic symbol with graphic representations of athletes participating in various Olympic sports. It has one employee—its founder and president Stanley R. Shefler.

International Sports Marketing, Inc. ("ISM") is a Vermont corporation that does not have any employees other than its founder and president, Ronald Kulka. ISM has little, if any, ongoing business except to serve as "a receptable for contract rights and the profits associated with the exploitation of those rights by others." (District Court Opinion filed April 27, 1983 at 7).

Although identified as a party by Intelicense, ISM did not file a brief before the Second Circuit Court of Appeals and has not sought review by this Court.[1]

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[1]The claims against two other original parties to this action, sublicensee's of Intelicense (Millsport, Inc. and Sport Graphics, Inc.), were disposed of by entry of permanent injunctions prohibiting further marketing of the pictograms in this country without the consent of the United States Olympic Committee.

COUNTER STATEMENT OF THE CASE

The essential facts of the dispute are concisely and accurately summarized in the Second Circuit Opinion below. (Petition at 23a–25a).

Circuit Judge Oakes, sitting by designation in the district court, enjoined Intelicense from licensing the pictograms in the United States without obtaining the consent of the United States Olympic Committee. That decision was predicated on three separate grounds:

1. Intelicense's licensing activities contravened 36 U.S.C. § 380;
2. the IOC/Intelicense contracts[2] themselves limited Intelicense's rights to only those countries where Intelicense could obtain the consent of the local National Olympic Committee ("NOC");[3]
3. Intelicense's activities contravened the IOC Charter which requires the approval of any NOC before Olympic emblems containing the Olympic symbol can be marketed in the territory of the NOC.

(Petition at 12a, 25a).

The Court of Appeals affirmed the district court, holding that § 380 was intended to give the United States Olympic Committee "unfettered control over the commercial use of

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[2]The United States Olympic Committee was not a party to these contracts nor did it participate in any of the contract negotiations leading to their formation.

[3]Each country participating in the Olympic Movement has an NOC which is recognized by the International Olympic Committee ("IOC"). Each NOC is autonomous and is not controlled by the IOC. The United States Olympic Committee is the NOC for the United States. (*See* Petition at 8a).

Olympic-related designations" in the United States (Petition at 27a). In characterizing Intelicense's actions, the court stated "we cannot imagine a more blatant violation of the [Amateur Sports] Act." (Petition at 28a).

Intelicense repeatedly attempts to create the impression that the United States Olympic Committee is interfering with the desire of the IOC (which Intelicense asserts is the "owner" of the pictograms) to exploit and market those rights in the United States. This completely ignores the fact, as found by the courts below, that the IOC supported the position of the United States Olympic Committee that no marketing could take place in the United States without the prior approval of the United States Olympic Committee. (*See, e.g.*, Petition at 31a).

ARGUMENT

Respondent United States Olympic Committee respectfully requests that the Petition for A Writ of Certiorari be denied as not properly pertaining to a matter appropriate for this Court's exercise of discretionary jurisdiction. The issues alleged in the Petition do not involve a conflict with the decision of any lower court nor between the decision below and the decisions of this Court. Neither does the decision of the Second Circuit Court of Appeals involve a matter of potentially wide ranging impact likely to affect other litigants. Finally, the judgment against Intelicense was based, in part, on factual findings and alternative grounds which would be unaffected by the decision of this Court on the questions presented for review. Therefore, the Petition should be denied since the decision would remain unchanged regardless of the action taken by this Court.

It is submitted that the instant Petition is based on a simple disagreement with the findings and conclusions of

the district court which were unanimously affirmed on appeal.

I. There Is No Conflict Between Decisions Of The Circuit Courts of Appeal.

Far from the existence of a conflict between circuits, the Second Circuit decision expressly recognized and agreed with the "cogent analysis" of the court in *International Olympic Committee v. San Francisco Arts and Athletics*, 219 U.S.P.Q. 982 (N.D. Cal. 1982), *aff'd*, No. 82–4467 (9th Cir. 1983), and observed that, at least insofar as the purpose of § 380 is concerned, "each court to have passed on the intent of § 380" has agreed with the position of the district court below. (Petition at 27a).

II. There is No Conflict With This Court's Decisions.

The first question presented in the Petition is whether the Amateur Sports Act of 1978 acted to deprive "the undisputed owner [IOC] and exclusive world licensing agent [Intelicense]" of certain property rights in the commercial exploitation of Olympic-related pictograms and thus constituted an unconstitutional taking of property.

Intelicense insists that the Court of Appeals decision is in conflict with established precedent of this Court, which, it is claimed, would set the time of the alleged taking as the time of assertion of § 380 by the United States Olympic Committee in 1980, as opposed to the statutory enactment by Congress of the Amateur Sports Act of 1978. The courts below held that Intelicense had no standing to raise a "taking" claim since it was not the owner of any interest in the property in 1978, the year in which § 380 became law.

The relevant time for determining whether there is a compensable ownership interest for purposes of deciding who may have standing to maintain an action, as held by the

courts below based upon the precedents of this Court, is the time that a taking occurs. A taking occurs when effective control over property is exercised, and not necessarily when a formal declaration of condemnation is issued. *See, e.g., United States v. Dow*, 357 U.S. 17 (1958). The cases relied upon by Intelicense are fully in accord with the holding below, but involved situations where a taking was held to have occurred by virtue of government interference with or control over property *before* there had been formal government action, unlike this case in which the Second Circuit held that the formal state action and assertion of control occurred long prior to the date of Intelicense's contracts with the IOC.

The cases cited by Intelicense as precedent for the proposition that more than a statutory enactment is necessary for a taking are also distinguishable in that the statutes there in question were not directed to specific property to be taken but merely vested general regulatory power in an agency. In *Hodel v. Virginia Surface Mining and Recl. Ass'n*, 452 U.S. 264 (1981), this Court considered the Surface Mining Act and held that the mere enactment of that Act did not constitute a taking.[4] This holding was based on the fact that the Act, on its face, did not prohibit the use of the property by the owner. *See* 452 U.S. at 296.

In the instant case, however, the "property" in question was both specifically identified and all rights therein immediately affected upon enactment of the Amateur Sports Act in 1978.[5] Therefore, even if there had been a "taking" by

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[4]Intelicense's reliance on *Hodel v. Virginia Surface Mining & Recl. Ass'n* is further misplaced because the issue in that case was solely whether the Surface Mining Act was a taking. It did not address the time of taking question.

[5]Section 380(c) plainly states that the United States Olympic Committee is given the "exclusive right to use" the Olympic symbol and other Olympic-related designations.

reason of 36 U.S.C. § 380, contrary to the holding of the district court that none had occurred (Petition at 19a), it would have been against the interests of the IOC which, upon enactment of § 380 *at once* would have lost its rights and, consequently, it would only be the IOC that could properly challenge § 380 as a taking of property.[6]

Furthermore, although Intelicense alternatively asserts that an agency relationship existed between it and the IOC which qualifies it to assert a taking claim on behalf of the IOC, this alleged relationship is of no consequence with respect to Intelicense's lack of standing to raise such a claim. It is a well accepted principle of agency law that an agent acts in the interest of and at the behest of its principal. The courts below found that the IOC "explicitly accepted the authority vested in the United States Olympic Committee by § 380 to control marketing of the Olympic symbol in the United States" and that the IOC directed Intelicense to cease its licensing activities in the United States. (Petition at 31a n.6). Therefore, the findings of fact below compelled the conclusion that petitioner was neither empowered nor authorized to act on the IOC's behalf in conducting this litigation or in raising a "taking" claim.

It is, therefore, evident that the Second Circuit properly applied the correct rule in *United States v. Dow*, *supra*, and

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[6]The IOC has not challenged § 380 as a taking. Indeed, the Second Circuit affirmed the decision of the district court, which found as a matter of fact that the IOC, the alleged *owner* of the pictograms, asserted no right to license the pictograms in the United States without the consent of the United States Olympic Committee. In fact, the IOC had instructed its alleged "world licensing agent" to discontinue its marketing activities in the United States, acknowledging that the United States Olympic Committee had the exclusive rights to control the marketing of Olympic-related designations in the United States. (Petition at 31a).

that Intelicense merely disagrees with the finding of the court as to the time of taking. Since Intelicense has shown no circumstance or fact which would tend to suggest that there has been some governmental action[7] after October 1979 which could be construed as a taking, as it must to avoid an adverse decision based upon this Court's precedent under *United States v. Dow*, Intelicense cannot assert a taking and the Petition for Certiorari should be dismissed. *United States v. Clarke*, 445 U.S. 253, 256 n.3, 258 (1980).

The second question seeks a review as to whether the Amateur Sports Act of 1978 delegated "legislative power to an interested, private entity," which could then act to condemn or foreclose the exercise of property rights by others without due process or any form of review. However, the facts as found by the courts below clearly indicate that the United States Olympic Committee did not exercise legislative power; it did no more than exercise a *private* cause of action against those who would misappropriate its rights.

III. The Decision Below Is Not Likely To Affect Other Litigants.

Intelicense has argued below that its position is unique in that it is the only case to involve a defendant who has ostensibly been authorized by the IOC to commercially exploit the Olympic Symbol in this country. Aside from the findings below that Intelicense was not acting within the

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[7]The United States Olympic Committee is a private corporation; its acts do not constitute state action. *DeFrantz v. U.S. Olympic Committee*, 492 F. Supp. 1181, 1192 (D.D.C.), *aff'd*, 701 F.2d 221 (D.C. Cir. 1980). Thus, the alleged acts by the United States Olympic Committee which occurred after 1979 cannot be attributed to the government, and cannot be a taking. The United States Olympic Committee was merely asserting its pre-existing exclusive rights against an interloper.

scope of IOC authorization,[8] the very uniqueness of Intelicense's position weighs heavily against the granting of certiorari since it is not even claimed, much less demonstrated, that the efforts of this Court will have a beneficial effect of generally relieving federal judicial burdens.

IV. Regardless Of The Decision Of This Court On The Issues Presented For Review, The Result In This Case Will Not Change.

In the unlikely event that this Court were to reverse its longstanding precedents and hold that ownership interests in the alleged property rights were to be measured after the act alleged to be a taking occurred, Intelicense could not prevail anyway in light of the alternative holdings of the district court in favor of the United States Olympic Committee. The property rights alleged by Intelicense are based upon the contract between the IOC and Intelicense. The district court found that the contract expressly provided that authorization by the United States Olympic Committee was required before marketing of any Olympic-related designations in the United States could take place and, further, that Intelicense at all times knew this restriction on its ability to market the pictograms.[9] The effect of this limitation on Intelicense's rights is that Intelicense had no rights which could be "taken." Therefore, it is clear that even if 1980 might be found to be the appropriate time for determining ownership in the property rights allegedly taken, in-

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[8] *See supra* note 6.

[9] The Second Circuit affirmed the finding of the district court that "the agreements provided that Intelicense must first receive the approval of each NOC" before marketing in the territory of any such NOC. (Petition at 23a). In addition the second alternative holding of the district court was that any broader interpretation of the license agreement would be unreasonable, since it would violate the provisions of the IOC's own Charter.

stead of 1978 as held by the courts below, the taking question is still not truly presented since Intelicense had no contractual right entitling it to license the pictograms in the United States in the absence of permission by the United States Olympic Committee.

Given this alternative ground for rejecting Intelicense's arguments it bears noting

> this Court's oft-repeated admonition that the constitutionality of statutes ought not be decided except in an actual factual setting that makes such a decision necessary. See *Socialist Labor Party v. Gilligan*, 406 U.S. 583, 588, 92 S.Ct. 1716, 1719, 32 L.Ed.2d 317 (1972); *Rescue Army v. Municipal Court*, 331 U.S. 549, 568–575, 584, 67 S.Ct. 1409, 1419–1423, 91 L.Ed. 1666 (1947); *Alabama State Federation of Labor v. McAdory*, 325 U.S. 450, 461, 65 S.Ct. 1384, 1389, 89 L.Ed. 1725 (1945). Adherence to this rule is particularly important in cases raising allegations of an unconstitutional taking of private property.

Hodel v. Virginia Surface Mining and Recl. Ass'n, 452 U.S. at 294–295.

Remaining Undecided Issues

While the above premises in and of themselves provide substantial bases to deny the Petition, unresolved issues exist which further compel a denial of certiorari. First, to the extent that it is claimed that the property rights which allegedly have been "taken" are copyrights in the pictograms and in the Olympic symbol, there are unanswered questions as to whether the claimed copyrights in the pictograms are valid, and whether any copyright in the Olym-

pic symbol alone had been destroyed through publication without copyright notice, if it ever existed.[10]

Since resolution of these copyright questions was unnecessary for final disposition of the disputed claims raised by the parties, the courts below did not make any findings as to whether these registrations were valid, and if valid, what the extent of the protectable matter in those designs may have been. This circumstance would necessitate remanding the action to the district court for factual findings concerning the disputed copyright claims.

In addition, because the Second Circuit Court of Appeals found it unnecessary to review the alternative legal grounds decided by the district court, there remain both legal and factual questions making this inappropriate for Supreme Court review.

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[10]Despite petitioner's allegation that the IOC has held a copyright in the Olympic symbol since 1914, the courts below made no such finding. However, stipulated evidence that the Olympic symbol has been published without the copyright notice prescribed by statute precludes recognition of any copyright protection for the Olympic symbol. *See* 17 U.S.C. § 10 (1970). Although there are U.S. copyright registrations relating to the pictograms, the United States Olympic Committee challenged the validity of these registrations.

CONCLUSION

In view of Intelicense's blatant violation of § 380, its failure to abide by its contractual obligations, and its failure to follow the IOC Charter, this case does not present any constitutional questions appropriate for review by this Court.

For the reasons indicated, it is respectfully submitted that review by this Court is not warranted and the Petition for Certiorari should be denied.

Respectfully submitted,

UNITED STATES OLYMPIC COMMITTEE

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CERTIFICATE OF SERVICE

I, Richard G. Kline, Esq. member of the firm of Beveridge, DeGrandi & Kline, 1819 H Street, N.W., Suite 1100, Washington, D.C. 20006, counsel for the Respondent in the above entitled cause, and member of the Bar of the Supreme Court of the United States, hereby certify that on the 16th day of October, 1984, I served copies of the foregoing Respondent's Brief in Opposition by mailing three copies thereof, in a duly addressed envelope with first class postage pre-paid, to the attorney of record for Petitioner, Peter F. Langrock, Esq., Langrock Sperry Parker and Wool, P.O. Drawer 351, Middlebury, Vermont 05753..

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